

1 agree with that?

2 A Yes.

3 Q Did you testify truthfully at this  
4 hearing?

5 A No.

6 Q You lied at this hearing; is that correct?

7 A Yes.

8 Q Now, so even though you lied then, are you  
9 lying today?

10 A No.

11 Q What was your reasoning for lying back in  
12 1997?

13 A I didn't want no part of it.

14 Q I'm sorry?

15 A I didn't want no part of it.

16 Q When you leave the house where did you go?

17

18

19 MR. MULLER: I'm sorry. The Court's  
20 indulgence.

21

22

23 BY MR. BATSON:

24 Q How is it you came to tell the police  
25 about your involvement or what you

1 witnessed?

2 A Because I just kept seeing it over and  
3 over and over.

4 Q So you went to the police to say, hey, I  
5 was a witness to this incident?

6 A No, I didn't go to the police. I talked  
7 to my uncle about it and he advised me to  
8 go to the police, and I went to the  
9 police.

10 Q And you talked to Heffner or somebody else  
11 in the police department?

12 A Yes.

13 Q You tell them what you saw?

14 A I talked to Heffner.

15 Q You didn't do it because you were coerced  
16 by the Commonwealth or anybody like that  
17 to go?

18 A No.

19 Q Now, at this time though you had pending  
20 criminal charges; is that right?

21 A No.

22 Q You didn't have pending criminal charges?

23 A No.

24 Q. You weren't charged with hindering the  
25 apprehension of an individual?

1 A No.

2 Q You didn't have juvenile charges?

3 A Yes.

4 Q So you're saying you came forward today to  
5 testify because you saw stuff on the news.  
6 Is that what your testimony is?

7 A I said because I kept seeing it over in my  
8 head.

9 Q So it took you until 2002 to come forward?

10 A (No response.)

11  
12  
13 MR. McCORMACK: In the transcript it's --

14  
15  
16 THE COURT: You have to answer the question.

17 Did you answer that question?

18 THE WITNESS: Actually it was 2001.

19 BY MR. BATSON:

20 Q You came forward in 2001.

21 A Yeah.

22 Q So you didn't come forward because you  
23 were subpoenaed by the grand jury? You're  
24 saying you didn't come forward voluntarily  
25 because of being forced by the grand

1 jury?

2 A Say that again.

3 Q Were you compelled to come forward because  
4 the grand jury was convened in this case?

5 A No.

6 Q You weren't?

7 A No.

2 MR. MULLER: Your Honor, another witness was  
3 called and then Ms. Cruz was recalled by Defense  
4 counsel.

7 BY MR. BATSON:

8 Q Miss Cruz, I just have one follow-up  
9 question. Earlier you testified about  
0 seeing my client discharging a weapon when  
1 you went upstairs. What I need to know  
2 is, in what position did you see my client  
3 in when you saw him discharging that  
4 weapon?

5 A He was, like, in the doorway almost, like

a couple of steps away from the doorway.

Q Was he standing up? Was he sitting down?

A Standing up.

Q Straight up.

A. Yes.

MR. BATSON: Thank you. That's all I have.

THE COURT: That's the extent of the  
pt.

MR. McCORMACK: Yes.

THE COURT: Do I understand, Mr. McCormack, we don't have a witness you could fit in here in 20 minutes.

MR. McCORMACK: No, Your Honor, that's correct.

THE COURT: All right. Well, ladies and gentlemen, we'll start our weekend break early. You should leave your notebooks in the envelopes, and the pens, leave them on your chairs. We'll collect them. We're going -- is there anything we'll need to address Monday morning before we bring the jury in the courtroom that anyone can think of now?

MR. MULLER: Briefly, not prolonged.

THE COURT: I have one pretrial conference for

1 civil trials that start the week after. That's at  
2 nine. I'd like you back here Monday morning to  
3 commence testimony at 9:30, which means be back in the  
4 courthouse around 9:15 or 9:20 so we can be ready to  
5 go.

6 You are not permitted to discuss this case or  
7 any of the evidence you heard amongst yourselves or  
8 with any other persons over the weekend. Please be  
9 very careful now. Stay away from any kind of  
10 newspapers or media that may contain any commentary of  
11 the trial, avoid all such outside influence whatsoever.

12 But enjoy your weekend. I hear it's supposed  
13 to be nice weather, and we'll see you Monday morning.

14 (The jury exited the courtroom at 4:04 p.m.)

15  
16  
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Monday, September 19, 2005

## Morning Session

(The jury entered the courtroom at 10:10 a.m.)

THE COURT: Good morning, ladies and gentlemen. Welcome back. I hope you had an enjoyable weekend. Are we ready to proceed?

MR. McCORMACK: Yes, we are, Your Honor.

THE COURT: Call your next witness.

MR. McCORMACK: At this time I call Detective Donald Heffner.

DONALD HEFFNER,

having been sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. McCORMACK:

Q Could you tell me your name?

A My name is Detective Donald Heffner,  
H-E-F-F-E-R.

Q And by whom are you employed?

A Harrisburg Bureau of Police, Criminal

1      Investigation Division, Shield 15.

2      Q      How long have you been with the Harrisburg  
3      police?

4      A      Since 1992.

5      Q      And you said Criminal Investigation Division.  
6      What specifically do you do?

7      A      We investigate reports of criminal activity as  
8      they come up from uniform patrol. You can pick up the  
9      phone and call 911 and report a crime, theft, drugs,  
10     shootings, what have you. Uniformed patrol arrives  
11     first. Depending on the seriousness of the event a  
12     detective may arrive on scene or the report may be  
13     written and it is sent upstairs to the Criminal  
14     Investigation Division where we launch an investigation  
15     on the incident.

16     Q      And in this particular case, did you start out  
17     with this case from the beginning in 1996?

18     A      No.

19     Q      What were you doing in 1996?

20     A      I was working narcotics.

21     Q      Now, how did you wind up involved in this  
22     particular case and now the lead investigator?

23     A      On May -- I think it was May 18, 2000 I  
24     received information on this case. My supervisor at  
25     the time was Sergeant Teel. Sergeant Teel asked me to

1 look into the case and later in 2001 he actually  
2 assigned this case to me as a case assignment.

3 Q What was the status of the case? What date did  
4 you say you had this conversation with Sergeant Tee1?

5 A Actually received it was May 18, when I  
6 received information, 2000. It would have been right  
7 after that. It would have been about that week.

8 Q With the Harrisburg police in May of 2000, what  
9 was the status of this case?

10 A It was a cold open homicide.

11 Q When you say cold, what do you mean by that?

12 A Nothing had been done on it for quite some  
13 time. I believe the last thing that had been done had  
14 been done in '98 by one of our detectives.

15 Q So you get some information from someone.  
16 Somehow you get some information related to this case  
17 and then you follow up. What do you do?

18 A I take down the information, and I was not that  
19 familiar with the case. I had not read it before.  
20 What I did, I collected all the documents I could and  
21 just began reviewing the case updating myself on  
22 everything that had been done up to that point.

23 After that what I decided to do since I knew  
24 nothing about the people involved in this incident, I  
25 decided it was best for me to go into it with an open

1 mind and begin at the beginning and interview  
2 everybody.

3 Q When you say everybody, what do you mean  
4 everybody?

5 A I mean everybody. Everybody that -- whose name  
6 was mentioned throughout the investigation; whoever was  
7 attached to this case and in any way I tried to follow  
8 up and interview them.

9 Q Once you get up to speed with the case and  
10 became familiar with it, did you do anything with any  
11 of the evidence or anything like that?

12 A Yeah. In fact, that was one of the first  
13 things we did. I went over the evidence from 1996 to  
14 2000. Technology had changed. It had become better.  
15 Our DNA system had become better.

16 So what we did was, I met with my supervisor,  
17 with the supervisor of the case, Sergeant Drobennak and  
18 Coroner Graham Hetrick. What we did was, we sat down  
19 and went over all the evidence. It was decided that it  
20 was best to meet with the DNA lab technician, LeeAnn  
21 Singley. We met with her on a couple of different  
22 occasions, and from this what I ended up doing with all  
23 of these things, we checked the fingerprints on the --  
24 on Iris. I checked out the forensic unit. Nothing  
25 could be done with that. We explored the possibility

1 of the soot on her to see if we could sequence the  
2 shots. That was not possible.

3 We had a weak DNA kit on LaQuan with a blood  
4 smear on the boot that you heard about. We had better  
5 science. I wanted to send that back in. We had a bite  
6 on the wrist of Iris Fennel. I wanted to see what we  
7 could do with that. We sent the pictures to the  
8 odontologist. We found out it was just a human bite  
9 mark.

10 MR. MULLER: Objection to any results that  
11 aren't in evidence.

12 THE COURT: Sustained.

13 THE WITNESS: We sent up the socks from Iris  
14 back out to the lab. We sent the T-shirt she was  
15 wearing back to the lab. We sent, I believe, Tyshaunt  
16 Love's coat back to the lab, his pants, the boot of  
17 LaQuan Williams and all of the clothing LaQuan Williams  
18 was wearing at the time. We sent all that back out to  
19 the lab. We also went over all the blood evidence on  
20 the clothing from the photographs.

21 BY MR. McCORMACK:

22 Q As you begin this process, had you by this  
23 point in time met with these people, had you eliminated  
24 Kazar or LaQuan Williams in this case?

25 A Nobody was eliminated.

1 Q How about Guillermina Cruz?

2 A No, she was not eliminated.

3 Q So you start kind of from scratch, start moving  
4 along. Were their witnesses that you saw that needed  
5 followed up with in greater detail?

6 A Yes.

7 Q What are some of the witnesses that you felt  
8 needed to be followed up with?

9 A Socorro Roman, Jeanette McCurdy, Stacy Harris,  
10 and there were a lot of Iris's friends such as Daelene,  
11 Tawana Poteat, that hadn't been spoken to at all. I  
12 wanted to talk to all of them.

13 Q You mentioned Stacy Harris and we heard from  
14 Stacy and I had asked Stacy something about her being  
15 in the bar. Tell us about that.

16 A It was on the 25th of January. I think it was  
17 2002. I think it was 2002. I was in Roebuck's bar on  
18 Sixth Street on an unrelated issue with numerous parole  
19 officers and detectives and she approached me. She  
20 said she needed to speak to me about this case, and  
21 what I did I took out a card, I wrote a date and time  
22 on it for the 3rd of February and I gave it to her and  
23 said I hope I see you at the police station on that  
24 day.

25 Q Did she show up on that day?

1 A No.

2 Q Did you contact her?

3 A I contacted her on the 4th and again on the  
4 11th of 2003 -- I think it was August 2003 -- she was  
5 at the police station to pick up a family member and I  
6 saw her there and I spoke to her and I convinced her to  
7 talk to me about this incident and she did.

8 Q Now, so the other attempts to get her to come  
9 between when she happened to be at the station and the  
10 time you saw her in the bar, she didn't come in?

11 A No. She wasn't cooperating with me at all.

12 Q The case moves forward and at some point in  
13 time charges were filed against this Defendant; is that  
14 correct?

15 A Yes, on the 4th of September 2001.

16 Q And when does the Defendant wind up being  
17 arrested?

18 A On the 14th of February 2002.

19 Q Did you have an opportunity to speak with the  
20 Defendant back in February of 2002?

21 A Yes.

22 Q Describe it. Tell us about that.

23 A We were at the police station. It's about  
24 7:00. He was in custody for this warrant. I read him  
25 his rights, and after I Mirandized him we began talking

1 about his relationship with Iris and the details of  
2 what he could remember from 1996, about the night that  
3 Iris was killed.

4 Q Now, have you also during the time period  
5 leading up to that had an opportunity to speak with  
6 Guillermina Cruz?

7 A Yes.

8 Q Do you know where she was to start with?

9 A You mean from the beginning?

10 Q Yes. When you started with the case.

11 A No. I reached out to family and Guillermina  
12 actually contacted me.

13 Q At some point did you take a statement from  
14 Guillermina?

15 A Yes. That was -- yes, I did. I don't remember  
16 the exact date but I took two.

17 MR. MULLER: I'm sorry?

18 THE WITNESS: I took two.

19 BY MR. McCORMACK:

20 Q Has she -- obviously she wasn't here during the  
21 course of this trial. Have you had difficulties with  
22 her over time that you've been investigating this case?

23 A Yes, numerous.

24 Q Have there been times when --

25 MR. MULLER: Objection. Leading, Your Honor.

1                   THE COURT: Sounds like it was about to be but  
2 that might be a little premature.

3 BY MR. McCORMACK:

4                   Q    What difficulties did you have with her?

5                   THE COURT: Thank you.

6                   THE WITNESS: She was always telling me, first  
7 she would say she would be cooperative and then she  
8 would leave me messages and tell me she was not going  
9 to be cooperative or call. The other detectives that I  
10 was working with, Detective Baez, she would leave him a  
11 message saying she was done with the case, saying she  
12 wasn't going to cooperate.

13                  In fact, just so there was some kind of record  
14 that was going on, I took the message that Detective  
15 Baez received, two cell phone messages, that I had  
16 those transcribed and just recently I received right  
17 before this trial. I received the phone call from  
18 Ms. Cruz.

19                  Q    Now, you also had the opportunity to interview  
20 people such as LaQuan Williams?

21                  A    Yes.

22                  Q    Getting back to the statement from the  
23 Defendant, where did that statement take place at  
24 the --

25                  A    At the police station, at my desk.

1 Q How did it take place at your desk? Tell me  
2 about that.

3 A Do you want me to start from where we first  
4 met?

5 Q Where did you first meet?

6 A We met in eastern Pennsylvania, Northampton  
7 County, and that's where I picked him up and I drove  
8 him back to the police station. I met him around 4:20  
9 p.m. that day and drove him back.

10 Q When you get back, what time do you start the  
11 statement?

12 A It was 7:00. 7:00 when I Mirandized him;  
13 that's when I start the interview. The statement -- I  
14 think the formal actual recording of the statement  
15 maybe it was 7:45 or 7:55 p.m.

16 Q When you say the formal recorded statement,  
17 what do you mean by recorded?

18 A I mean, putting it in some kind of form that he  
19 could actually adopt as his own whether it be voice  
20 recorded where it's his voice or where it's  
21 transcription where I type what he says, type what he  
22 says and he adopts that after he reviews it, in this  
23 case corrects it, or he can write it himself.

24 Q And how did you do it this time?

25 A I transcribed it. As he answered my questions

1 I typed in his responses.

2 Q When you were finished, did you have an  
3 opportunity to review with him what you went over with  
4 him?

5 A Yes. He reviewed the statement, made the  
6 corrections and signed it.

7 Q Did you speak with him concerning what occurred  
8 on December 20 -- actually December 19 into December  
9 20, 1996?

10 A Yes, I did.

11 Q And do you have a copy of the statement that  
12 you took from him with you?

13 A Yes.

14 Q I'm going to direct your attention to really  
15 the bottom of your first page. What questions did you  
16 ask him at the bottom of the first page?

17 A What happened the last night that you saw her?

18 Q What was the answer to that?

19 THE COURT: Slowly, please.

20 THE WITNESS: Yes, Your Honor. We left the  
21 house. I don't recall what time. I don't think it was  
22 early. We went to the block on Market Street. We were  
23 hanging out at the bar having drinks. We were hustling  
24 that day. I don't think I had any work. She had  
25 worked but not a lot.

1           I was thinking she should be done. Everything  
2 was normal. People was having drinks. Her and I were  
3 chilling, not arguing or anything. She said she was  
4 going out to handle business, to serve somebody and she  
5 would be right back. Before she went out, she gave me  
6 a kiss by the juke box, by the bar. Somebody said  
7 something. I don't remember if it was Tawana or the  
8 barmaid, Neecy. She bounced. I don't know if Wendy  
9 left out first or I was going out first. When I saw  
10 Wendy later I asked if she had seen her. Wendy was  
11 like that she could be around here somewhere or  
12 something to that effect.

13           I chilled around the bar and I didn't see --  
14 and I didn't see her and I went to the house to check  
15 and she wasn't there. I went to the house three times,  
16 not to mention the calls I made from 14th and Market  
17 and 13th and Derry. I don't remember if it was the  
18 first time or second time that dude gave me a ride,  
19 earlier in the day, not even getting dark, almost dark,  
20 I made him take me two blocks over. I got out, went to  
21 the house and she wasn't there. This was the first  
22 time.

23           I don't remember how I got there the second  
24 time. I was on the block hanging out waiting for her  
25 to pop up. I called a lot of times, probably like two

1 hours from when she left. I seen Guillermina on the  
2 block walking by. I spoke to her. It was like casual  
3 normal conversation. I got her phone number. I called  
4 her later while I was waiting earlier in the day. I  
5 talked to her briefly then. I couldn't find her. I  
6 wanted to get like out of there. I didn't have no  
7 work. It was hot and I wanted out of there. The last  
8 time I went to my house it was light. She wasn't  
9 there, but I noticed the light on when I was there  
10 before.

11 That is how I knew she had to have been there.  
12 In the bedroom cabinet I saw loose money I picked it  
13 up. I know no one had keys to my house and no one was  
14 coming back. It was a lot of money sitting there. I  
15 had like \$20 left. I only had \$30 in my pocket. I  
16 left the money right there.

17 Then I left out and bounced. I went out on the  
18 block. I chilled. It had to have been after midnight  
19 by then. After the last call to the house I chilled  
20 for a minute. I called Tootie or went to her house and  
21 asked if she was coming out. I said, don't worry I got  
22 a spot so we can chill out and watch TV and be  
23 comfortable. We watched two movies like a karate  
24 movie. I don't remember what. I got up the next  
25 morning around 9 something. I went to the Kentucky

1 Fried Chicken and the manager was outside. I went in  
2 and ordered some biscuits and something to eat. I sat  
3 in there for a minute and ate that.

4 I went to the Five and Dime and bought gum.  
5 From out there I called a cab by the KFC. But no cab  
6 could come. I was sitting at the KFC. I seen the  
7 Spanish kid from the south and asked her for a ride.  
8 She couldn't give me a ride. She gave me a ride  
9 though. D told her to give me a ride and she gave me a  
10 ride and dropped me off a block from the house, like up  
11 at the gas station and she left.

12 I went up the hill and went down to the main  
13 block and turned and it was the house right there. I  
14 kept walking to the front of the house. I knocked on  
15 the door. I noticing the smell like now but there's a  
16 lot going on. There's some people working in the yard.  
17 I knocked on the door louder and called her by name.  
18 I left out -- that when I came from the car I had my  
19 keys.

20 I put my keys right next to a pole across from  
21 my house, a telephone pole. I was going to tell her I  
22 lost my keys that is why I spent the night out. I  
23 called her name. I started to smell smoke. I walked  
24 around to the front of the house. I knocked on the  
25 door two times and it came open. I walk in and I see a

1 hell of a fire, smoke shooting out. I'm calling Iris,  
2 you fell asleep and left the oven on. I walk to the  
3 stove; turned the stove off. I went up the stairs and  
4 was calling her name.

5 I seen the bedroom was split toss. The first  
6 thing that came to my mind was she was pissed. I  
7 walked in and she got pissed flipped out and left. I  
8 turned around to walk back and said to myself she is  
9 pissed.

10 I walked to my room. There's a stereo, weight  
11 bench. I turned around and I see what looked like a  
12 leg. Then I look and say, Iris. I move quick over to  
13 her and she's like laying there. She was in the corner  
14 laying there with her legs open and naked. I shook her  
15 leg and called her name. I couldn't see her face.  
16 Then I looked and saw her face, like it was black on  
17 one side.

18 I immediately turn and run down the steps. I  
19 went to yell help but couldn't say it. I don't  
20 remember if I was in the house or bumped into him or  
21 was outside. He said 'is there a fire. We got to call  
22 an ambulance. She needs help. She is not moving. I  
23 was going to knock on a neighbor's house. He ran over  
24 to his house and a lady came over and I said she is not  
25 moving.

1           We went back upstairs and she was like doing a  
2 pulse. Then the ambulance was there real fast. What  
3 do you mean -- I'm sorry -- the only person -- she  
4 didn't feel a pulse and I said, what do you mean? From  
5 there her mother got there fast. From Iris's sister --

6           MR. MULLER: You missed one.

7           THE WITNESS: Did I?

8           I'm in a state like this can't be happening.  
9 Iris's sister asked, Cuzzo, what happened? I was like  
10 I don't know, and was just in a state. I can't really  
11 describe it. I said I don't know.

12 BY MR. McCORMACK:

13 Q   Did you ask him any questions about there ever  
14 being a gun in the house?

15 A   Yes.

16 Q   What did he tell you about that?

17 A   He said, no, there was no gun.

18 Q   In fact, at the bottom of that page that you  
19 were just reading from, what was the question you asked  
20 specifically?

21 A   Question: Was there a gun in the house?

22           Answer: No.

23 Q   What was the next question?

24 A   Question: Did you ever carry a gun while in  
25 Harrisburg?

1                   Answer: No.

2                   Q   Did you ask him about Iris also?

3                   A   Yes.

4                   Q   What did he say about Iris?

5                   A   I asked him if Iris carried a gun and he said  
6 no.

7                   Q   Now, later on in the statement does he tell you  
8 that at least at some point in time he did have a gun?

9                   A   Yes. He said he had a gun several months prior  
10 to the murder.

11                  Q   And he had it for like a month. Okay. And if  
12 you go to the -- in fact, the bottom of the page 4 of  
13 your statement.

14                  A   Yes.

15                  Q   Could you -- what did you ask him? What's the  
16 question there?

17                  A   Which question, the last question?

18                  Q   The very last question.

19                  A   Where did you get the gun?

20                  Q   And what was the answer?

21                  A   I don't know. I had the gun for a hot minute,  
22 like a month.

23                  THE COURT: A hot minute?

24                  THE WITNESS: A hot minute. I don't know if I  
25 got it from my cousin. That was months and months

1 before that happened to Iris. We didn't have any more  
2 guns. To tell you the truth we were trying to get a  
3 gun.

4 BY MR. McCORMACK:

5 Q Just finish that off.

6 A Right after that she got robbed.

7 Q Now, he mentioned before about coming to the  
8 house and in the bedroom cabinet saw loose money. Did  
9 you ask him how much money she had in the house?

10 A Yes.

11 Q What did he tell you?

12 A I believe he told me \$3,000.

13 Q What did he say? What specifically was his  
14 answer? It's on page 5. How much money did Iris have  
15 in the house when she was killed?

16 A It says answer: At least 3,000. There was at  
17 least 1500 sitting in the open. When I left it was  
18 right wherever or under the bed or behind the couch  
19 rolled up in the carpet, under the sink, in the  
20 bathroom. She had a lot of stash boxes.

21 Q How about the next question.

22 A Question: Was this both your money or only  
23 hers?

24 Q What was the answer?

25 A Answer: Both our money.

1 Q Now, up to this point as you reviewed the case  
2 there was never any mention from him about money being  
3 in the house or anything?

4 A No.

5 Q Did you have a discussion with him about his  
6 relationship with Iris, the state of his relationship  
7 with Iris?

8 A Yes.

9 Q Did you ever ask him if he believed that she  
10 was cheating on him?

11 A Yes.

12 Q And if you go to the top of page 8 what was his  
13 answer to that question?

14 A It says answer: I didn't think our  
15 relationship -- I thought she might -- I thought that  
16 she might be but I was never -- it was never like a  
17 serious --

18 Q What was the question you followed that up  
19 with?

20 A Question: Did you get jealous about her having  
21 sex with other guys?

22 Q What was the answer?

23 A Nah. It wasn't a happy thought but it wasn't  
24 an issue.

25 Q In the statement to Investigator Taylor, he

1 made some reference to the key being dropped by a  
2 telephone pole on Swatara Street.

3 A Yes.

4 Q What did he tell you about where he put the  
5 keys in your statement?

6 A He said the key, he dropped the key by a  
7 telephone pole across from his house, across the street  
8 from his house.

9 Q Is that Swatara Street?

10 A No, that's McCleaster Street.

11 Q Where is Swatara Street?

12 A Swatara would be another street north.

13 Q Another block. You mentioned something about  
14 the time, something about that he was going over to the  
15 house. Do you recall the first time he said he was  
16 going over to the house?

17 A Yes. He said it was not even getting dark yet.  
18 That was the first time and the second time he couldn't  
19 remember how he got there.

20 Q Then when he talked to Investigator Taylor he  
21 made some comments concerning Iris having been sleeping  
22 in the house and him looking for her, making phone  
23 calls and she didn't show up at the bar until eleven.  
24 How does Iris get to the bar when he talks to you?

25 A He indicated that they went together to the

1 bar.

2 Q Now, in reviewing this case you had an  
3 opportunity to go through all the evidence; is that  
4 correct?

5 A Yes.

6 Q And all the pictures?

7 A Yes.

8 Q Was there ever a picture of a footprint from  
9 the living room of the residence?

10 A Yes.

11 Q I'm going to show you what has been marked as  
12 Commonwealth Exhibit 63. Do you recognize that  
13 photograph?

14 A Yes. It looks like an impression of a  
15 footprint, dark gray on this tile floor.

16 Q And from looking over the photographs of this  
17 case that tile floor appears to be in which room of the  
18 house?

19 A I think it's the bedroom.

20 Q Well, let me see if I can...

21 A Either the bedroom or the kitchen -- I mean,  
22 not the bedroom, the living room.

23 Q So we're not confused here, which one are you  
24 saying it is?

25 A I think it's the living room.

1 Q Just so we're clear on these things, I'm  
2 showing you Commonwealth Exhibit No. 64. Do you  
3 recognize what that is a photograph of?

4 A Yes.

5 Q What is that a photograph of?

6 A The living room of her apartment.

7 Q Now, you noticed the television set there?

8 A Yes.

9 Q And I believe there's like a little kid  
10 shopping cart?

11 A Yes.

12 Q I'm going to show you Commonwealth Exhibit  
13 No. 65. Do you see the television and the shopping  
14 cart there?

15 A Yes.

16 Q And the footprint is the footprint from --

17 A Yes, it is.

18 Q Where is the footprint?

19 A In the middle of the photograph above my  
20 finger.

21 Q And then Commonwealth 63, which is where we  
22 started, that's a close up of the footprint you were  
23 just pointing to on Commonwealth Exhibit 65 in the  
24 living room; is that correct?

25 A Yes.

1 Q Were you able to determine during the  
2 investigation whose footprint that was?

3 A Yes.

4 Q Whose?

5 MR. MULLER: Objection.

6 THE COURT: Based on...

7 MR. MULLER: May we approach?

8 THE COURT: Sure.

9 (A discussion is held at sidebar off the  
10 record.)

11 MR. MULLER: Withdrawn, Your Honor.

12 BY MR. McCORMACK:

13 Q Was it determined whose print that was?

14 A Yes.

15 Q Whose was it?

16 A It belonged to one of the medics that was at  
17 the house.

18 MR. McCORMACK: If I could have just one  
19 moment.

20 BY MR. McCORMACK:

21 Q Now, there were times that Guillermina Cruz,  
22 Toothie, wasn't cooperative, and you mentioned you made  
23 some notes in your report of the times that she didn't  
24 -- she actually left you phone messages saying she  
25 didn't want any part of the case?

1 A Yes.

2 Q Were there other times that she was cooperative  
3 with you?

4 A Yes.

5 Q You heard her transcript read on Friday where  
6 she indicated that LaQuan Williams was present in the  
7 home when this Defendant killed Iris Fennel. Do you  
8 recall that?

9 A Yes.

10 Q Had she told you that at any time prior to the  
11 preliminary hearing?

12 MR. MULLER: Your Honor, objection.

13 THE COURT: Hearsay?

14 MR. MULLER: Yes.

15 MR. McCORMACK: I'm not admitting it for the  
16 fact of the matter asserted if we can approach.

17 THE COURT: All right.

18 (The following discussion is held at sidebar:)

19 MR. McCORMACK: I'm seeking to admit that's a  
20 reference point and give him a follow-up question as to  
21 her demeanor during that conversation, how she was  
22 acting during the conversation.

23 MR. MULLER: How she was what?

24 MR. McCORMACK: Her demeanor during the  
25 conversation.

1 MR. MULLER: Which conversation?

2 MR. McCORMACK: With Heffner.

3 THE COURT: How is it still not hearsay?

4 MR. McCORMACK: I'm not admitting it to say  
5 that she says -- I said are you familiar with the  
6 statement and now --

7 THE COURT: You asked did she tell you that  
8 when she was talking with you.

9 MR. McCORMACK: Well, I'm trying to focus in on  
10 maybe it's easier to give a date as to when he met with  
11 her.

12 MR. MULLER: What are you trying to show when  
13 she first mentioned Kazar?

14 MR. McCORMACK: There's a point of time when  
15 she spoke to the police, in talking about this homicide  
16 that she was very emotional, crying and those were the  
17 thing I'm trying to elicit.

18 MR. MULLER: What does that have to do with  
19 anything about her telling him about Kazar?

20 MR. McCORMACK: It was during the conversation  
21 that she was emotional.

22 THE COURT: Use this an excuse to getting in  
23 prior inconsistent statements.

24 MR. McCORMACK: What I'm trying to do is show  
25 the demeanor that she had at certain points in time. I

1 think it becomes important as to whether the jury winds  
2 up ultimately believing her because obviously, you  
3 know, she has times she wants to cooperate and then  
4 other times that she doesn't want to cooperate during  
5 the time period and at the preliminary hearing  
6 transcript.

7 THE COURT: Well, go ahead.

8 MR. McCORMACK: During the preliminary hearing  
9 transcript there were references to her emotional state  
10 concerning the fact that, you know, she -- I don't  
11 remember the exact words -- but she -- why she came  
12 forward. She came forward and was cooperating at the  
13 time because, you know, she would see Iris or, you  
14 know, whether it was --

15 MR. MULLER: That wasn't in the prelim that we  
16 were talking about.

17 MR. McCORMACK: Yes, there was.

18 THE COURT: She said she saw the crime in her  
19 mind.

20 MR. McCORMACK: Yes.

21 MR. MULLER: How is her demeanor coming through  
22 Heffner? I mean, just bolstering a witness that isn't  
23 here.

24 MR. McCORMACK: Someone's demeanor has an  
25 impression. The fact that she was crying and stuff is

1 not an opinion. It's an actual -- I saw it.

2 MR. MULLER: This is to bolster their  
3 nonavailable witness.

4 THE COURT: That's my concern, Mr. McCormack.  
5 It sounds like that's what you're doing, substituting  
6 his observations that she didn't get to make. She's  
7 not here. I don't know if this is proper.

8 MR. McCORMACK: Well --

9 MR. MULLER: I mean, you're not trying to admit  
10 it under excited utterance maybe goes into the  
11 demeanor. That's not the case here.

12 MR. McCORMACK: Why isn't it the case? She  
13 comes in to him. She's emotional and fearful and  
14 provides him with additional information during that  
15 conversation.

16 MR. MULLER: You're getting into the  
17 information provided which is hearsay.

18 THE COURT: Unless she says why she's crying or  
19 emotional, which gets into hearsay and it's bolstering.  
20 I'm not going to permit it. Objection sustained.

21 (The discussion is concluded.)

22 MR. McCORMACK: Just one moment, Your Honor.  
23 BY MR. McCORMACK:

24 Q You indicated to the jury that you met with and  
25 spoke with Tyshaunt Love concerning this case and you

1 read portions of his statement. The person that you  
2 were speaking with, is he present in the courtroom?

3 A Yes.

4 Q And can you tell me where he is and perhaps an  
5 item of clothing he's wearing?

6 A Sitting there beside counsel at the defense  
7 table wearing a black shirt and glasses.

8 MR. McCORMACK: May the record reflect he  
9 identified the Defendant.

10 THE COURT: Yes.

11 MR. McCORMACK: They are all the questions I  
12 have at this time.

13 THE COURT: Cross-examine.

14

15 CROSS EXAMINATION

16

17 BY MR. MULLER:

18 Q You first became involved in this case some  
19 time in 2000?

20 A May 18, 2000.

21 Q Nothing really took place until 2001 as far as  
22 interviews?

23 A Yes.

24 Q During your investigation you were able to  
25 confirm that it was indeed Iris who had turned Kazar in

1 for a prior offense?

2 A Yes.

3 Q And you talked to among other people Kwajalyn  
4 Jackson?

5 A Kwajalyn.

6 Q And she told you Iris had told her that Kazar  
7 had come over the day before, knew about her snitching  
8 and wanted money from her, correct?

9 A Is that in the statement? I know that he had  
10 stopped by her house and wanted money and a place to  
11 stay. If that's what's in his statement.

12 Q What you wrote, Jackson also told me during the  
13 same conversation that Fennel told Jackson that  
14 Williams stopped by her house and asked for money. He  
15 also told her that she knew he told her on and told her  
16 to give him some money. That's from your report.

17 A Yes, that would be correct.

18 Q Mr. McCormack referenced this in your  
19 conversation with Stacy Harris?

20 A Yes.

21 Q And you said she came up to you in a bar  
22 originally in 2002?

23 A Yes, January 25th.

24 Q And all you did at that point was make  
25 arrangements to meet her, correct?

1 A Yes.

2 Q She didn't show up for your meeting?

3 A Correct.

4 Q But you did speak to her, looked like about a  
5 week later?

6 A I spoke to her on the 4th and on the 11th of  
7 February.

8 Q When you spoke to her on the 4th, she told you  
9 it was a long time ago and she doesn't remember as  
10 clearly as she did?

11 A Yes.

12 Q On the night or the morning Fennel was killed  
13 she heard gunshots, correct?

14 A Yes.

15 Q Can't remember when she heard the shots, and  
16 then you spoke to her about a week later. You said the  
17 11th of February of 2002. She told you she couldn't  
18 remember anything else, right?

19 A That's correct.

20 Q And you didn't take a statement from her until  
21 the following year?

22 A Yes, 8/27 2003 -- 04. I'm sorry.

23 Q August of 2004?

24 A August 27, 2004, yes.

25 Q That was the first time she provided you with

1 details, correct?

2 A Yes.

3 Q When among the things you reviewed in your  
4 case, was a receipt from Giant found in the apartment  
5 for food items, correct?

6 A Yes.

7 Q And you were able to determine where that Giant  
8 was, correct?

9 A It was the -- I believe we're talking about the  
10 Giant up at Kline Village.

11 Q You determined the time of the transaction,  
12 correct?

13 A From memory around 11:20 p.m.

14 Q Of...

15 A Of the 19th of December.

16 Q And just for foundation purposes this had been  
17 collected at the scene at the time of the incident?

18 A Yes.

19 Q And obviously it was kept as part of evidence  
20 up to and including the time you took the case in 2000  
21 and 2001?

22 A Yes.

23 Q Just to show you Commonwealth Exhibit 47. Is  
24 that the receipt we're talking about?

25 A Yes. It's a receipt from the 19th of December

1 1996, time stamp 12:12, Store No. 9, Harrisburg, which  
2 would have been the old Kline Village store before they  
3 tore it down.

4 Q And that's Kline Village. Just from a  
5 relationship perspective in the city, that's uptown,  
6 correct?

7 A That's the Uptown Plaza.

8 Q Now, to say uptown, what's that near?

9 A The high school, John Harris, across the  
10 street, 25th Street.

11 Q When --

12 MR. MULLER: The Court's indulgence.

13 BY MR. MULLER:

14 Q You mentioned -- you talk about this statement  
15 from Mr. Love. You met him in Easton, correct?

16 A Yes.

17 Q You picked him up because he turned himself in?

18 A Correct.

19 Q You brought him back to Harrisburg, brought him  
20 into the police station and at some point that evening  
21 you took this statement from him, correct?

22 A Yes.

23 Q Was it just you?

24 A Yes. I was the only one left in CID at the  
25 time.

1       Q    And when taking the statement essentially your  
2 first question -- second question, what happened the  
3 last night you saw her, and that's the section you read  
4 from.

5       A    Yes.

6       Q    Did you ever ask him about any discrepancies?  
7 Were you just taking the statement and leaving it as  
8 that?

9       A    What discrepancies are you referring to, sir?

10      Q    Mr. McCormack asked about some of the things he  
11 told Investigator Taylor versus some of the things that  
12 he told you didn't exactly match up. I'm assuming you  
13 were familiar with Investigator Taylor's interview.

14      A    Yes.

15      Q    We left the house. I don't recall what time.  
16 I don't think it was early. They were hanging out in  
17 the bar. Did you ask him what bar, where exactly they  
18 went at that point?

19      A    No. From speaking to him prior it was already  
20 inferred I knew what he was talking about. He already  
21 told me Fav's, and I was just trying to -- what he had  
22 said so those were his words.

23      Q    So you -- there was a preinterview so to speak?

24      A    Well, before formalizing we will talk. We just  
25 don't go right to the recorder, on a computer to type

1 something. It's uncomfortable. I have to get a  
2 person's permission to do it first. I want to have an  
3 idea of what we're going to be talking about.

4 Q After --

5 MR. MULLER: The Court's indulgence.

6 BY MR. MULLER:

7 Q Mr. McCormack asked you about the relationship  
8 with Iris and whether he thought she was seeing someone  
9 else. Did you talk to him and ask him about seeing  
10 other people too?

11 A We had talked about Guillermina Cruz. He had  
12 said --

13 Q And after at one point probably on page 8 I  
14 believe you had asked if you physically hit Iris or did  
15 she ever hit you?

16 A Yes.

17 Q What was the response?

18 A Do you want me to read it verbatim? Do you  
19 want me to summarize it?

20 Q It's three or four lines.

21 A He said they play, tussle, and that there was  
22 one time where Iris slapped his glasses off his head  
23 and kept them and he walked around blind for like two  
24 days before he got them back.

25 Q When you were involved in this investigation --

1 there was Guillermina Cruz who testified and left us  
2 some messages that you had transcribed?

3 A Yes.

4 Q One of those in 2001, did that refer to Anthony  
5 Knight threatening her?

6 A I don't recall. I didn't review the messages.  
7 If you have a copy there I'll review it, and I'll  
8 better be able to answer that, Mr. Muller, if I may.

9 Q Do you have it up there?

10 A No, I don't. I'm not sure if that was a  
11 message or just calling me to inform me of that.  
12 There was a phone call regarding that. But I don't  
13 believe it was -- it was just to let me know she was  
14 having problems from that person.

15 Q After --

16 MR. MULLER: The Court's indulgence. That's  
17 all I have.

18 THE COURT: Any redirect?

19  
20 REDIRECT EXAMINATION

21  
22 BY MR. McCORMACK:

23 Q When you said he indicated about having a  
24 sexual relationship with Toothie, when did he say he  
25 had a relationship with Toothie?

1 A He had sex with her the one night between the  
2 19th and the 20th and that was on the couch.

3 MR. McCORMACK: No further questions.

4 THE COURT: Anything else, Mr. Muller?

5 MR. MULLER: No.

6 THE COURT: Thank you.

7 MR. McCORMACK: Your Honor, at this time there  
8 has been an agreement between Mr. Muller and myself.  
9 Your Honor, because of distances and some time problems  
10 one of our witnesses was unable to attend this trial --  
11 other than Guillermrina Cruz -- and he was the medic  
12 that arrived. His name was John Ratchford Bruzinsik,  
13 R-A-T-C-H-F-O-R-D, B-R-U-Z-I-N-S-I-K. There's been an  
14 agreement between us if he had appeared at trial he  
15 would testify that he was the first medic on the scene;  
16 that he made entry into the residence; he did not bring  
17 any equipment. He recalls being greeted by a female  
18 upon entry. She was Hispanic but she was speaking  
19 English.

20 Once inside the location he went upstairs,  
21 observed the room, observed the body on the floor. He  
22 recalled the body was uncovered, body was clothed with  
23 a shirt, no bottom. The legs were spread and the body  
24 was face up. Arm was draped across the torso. He  
25 grabbed the right arm, pulled; he observed rigor had

1 set in. The torso moved when I pulled the arm. Body  
2 was cold. He did not attempt any resuscitation because  
3 it was obvious to him that the victim was deceased and  
4 did not further touch the body.

5 MR. MULLER: Just for clarification.

6 MR. McCORMACK: When he was there there was no  
7 other officials or police officers there prior to his  
8 arrival. He was the first person there. In fact, he  
9 would testify that they drove to a different street.  
10 He ran up in behind and came through the kitchen I  
11 believe while his partner drove the ambulance around to  
12 the front.

13 THE COURT: All right.

14 MR. McCORMACK: That would be the stipulation.

15 THE COURT: Is that acceptable to you?

16 MR. MULLER: Yes. We both talked to the  
17 gentleman on Monday and arrived at the stipulation.

18 MR. McCORMACK: At this time I would move for  
19 the admission of Commonwealth Exhibit Nos. 63, 64, 65,  
20 the pictures Detective Heffner looked at this morning  
21 during his testimony and the footprint and the pictures  
22 of the living room. I move for them to be admitted  
23 into evidence.

24 MR. MULLER: No objection.

25 THE COURT: They are admitted.

1 (Whereupon, Commonwealth Exhibit Nos. 63, 64  
2 and 65 are admitted into the record.)

3 MR. McCORMACK: I would move for the admission  
4 of Commonwealth Exhibit No. 1, the picture of Iris.

5 MR. MULLER: No objection.

6 THE COURT: Admitted.

7 (Whereupon, Commonwealth Exhibit No. 1 is  
8 admitted into the record.)

9 MR. McCORMACK: I believe other than No. 32,  
10 which I did not use and will not move, I believe all  
11 the other items have been moved into evidence at this  
12 time.

13 52 was from the Naval Observatory, times as to  
14 when twilight was and 51 was LaQuan Williams' shoes, if  
15 I did not I so move them at this time.

16 THE COURT: I just have no record of that being  
17 done. Do you have any objection?

18 MR. MULLER: No, Your Honor.

19 THE COURT: They are admitted.

20 (Whereupon, Commonwealth Exhibit Nos. 51 and 52  
21 are admitted into the record.)

22 MR. McCORMACK: At this time the Commonwealth  
23 rests its case.

24 THE COURT: Mr. Muller.

25 MR. MULLER: Defense would call Officer

1 Michelle Bailey.

2

3 MICHELLE BAILEY,  
4 having been sworn, was examined and testified as  
5 follows:

6

7 DIRECT EXAMINATION

8

9 BY MR. MULLER:

10 Q Would you state your name and occupation for  
11 the record?

12 A Michelle Bailey, detective with the Harrisburg  
13 bureau of police.

14 Q How long have you been with the Harrisburg  
15 police?

16 A For 19 years.

17 Q How long have you been a detective?

18 A For six years.

19 Q Back on December 20, 1996, what was your  
20 position?

21 A I was a patrol officer.

22 Q And do you recall responding to the scene in  
23 question in this case?

24 A Yes, sir.

25 Q On McCleaster?

1 A Yes.

2 Q Were you first responder?

3 A Yes, Corporal Muldrow and I.

4 Q And you had a chance to review your report or  
5 reports, correct?

6 A Yes, I did.

7 Q And approximately what time did you arrive at  
8 the scene?

9 A I don't remember the times on the report.

10 Q If it indicates that we were dispatched 1208  
11 hours, would that sound about approximate?

12 A Yes.

13 Q And you talked to several people at the scene,  
14 correct?

15 A Yes.

16 Q Among the people you talked to were Zachary  
17 Belcher, correct?

18 A Yes.

19 Q Jeanette McCurdy?

20 A Yes.

21 Q Socorro Roman?

22 A Yes.

23 Q When you talked to Mr. Belcher, where did that  
24 place? Was that at the scene?

25 A Yes, it was.

1 Q Do you recall what Mr. Belcher told you?

2 A That he saw smoke coming from the area, I  
3 believe it was 1941 McCleaster Street.

4 Q Did you take any more information from  
5 Mr. Belcher?

6 A I might have, but I don't remember offhand  
7 exactly what his statement was.

8 Q Did he ever indicate to you that he wasn't in  
9 the residence after smelling the smoke?

10 A I believe he did say he was in the residence.

11 Q Jeanette McCurdy, an older white woman who was  
12 a neighbor, do you recall her?

13 A I recall speaking to a neighbor, but I don't  
14 remember who she was specifically.

15 Q When you were speaking to these people, was  
16 Corporal Muldrow with you?

17 A I believe when I spoke to the neighbors, that  
18 he was inside the residence.

19 Q So you were outside?

20 A Yes.

21 Q After some other officers and your superiors  
22 arrived on the scene, you had a chance to interview  
23 Socorro Roman, correct?

24 A Correct. I didn't actually interview her.  
25 From what I remember I took basic information from her

1 so that she could be interviewed at a later time.

2 Q And she was with her grandson at that point?

3 A Yes.

4 Q Just for clarification, was the ambulance there  
5 already when you got there?

6 A They came after I arrived.

7 Q When you arrived, there was smoke or something  
8 burning, right?

9 A Correct.

10 Q From the apartment itself?

11 A Yes.

12 Q In your report you do indicate that you  
13 interviewed Ms. Roman.

14 MR. MULLER: If I may approach.

15 BY MR. MULLER:

16 Q Detective, can you identify what that is?

17 A This is my police report.

18 Q From that day?

19 A Yes, sir.

20 Q And does it indicate you interviewed Ms. Roman?

21 A Yes, I believe I did speak to her.

22 Q What did she tell you regarding where she was  
23 and what time things happened?

24 A Out cleaning the dog cages at the rear of her  
25 residence at approximately 1155 hours. They observed

1 smoke coming from the rear of 1941 McCleaster Street.  
2 That as Zachary Belcher attempted to enter the  
3 residence to check on the smoke situation and prior to  
4 entering Zachary observed Tyshaunt exit the rear door  
5 yelling for help.

6 Q Was -- and she indicated to you at some point  
7 that she went in to the apartment?

8 A If that's what it says, um-hum.

9 Q To check on the victim?

10 A Yes.

11 Q That was your only involvement in the case,  
12 correct, as far as writing the reports and doing thing?

13 A Yes, sir. I didn't conduct any follow-up  
14 investigation.

15 Q Do you recall how you said Mr. Love appeared at  
16 that time?

17 A Yes.

18 Q How did he appear?

19 MR. McCORMACK: Objection, Your Honor.

20 THE COURT: I'm not sure I understand. How did  
21 he appear there or what did he look like?

22 BY MR. MULLER:

23 Q What was his demeanor?

24 MR. McCORMACK: I object. It's asking for an  
25 opinion.

1           THE COURT: She can express her observations  
2 without expressing opinions I presume. Overruled to  
3 that extent.

4           THE WITNESS: What was his demeanor? He  
5 appeared to be upset. I remember that it took him  
6 quite a while to answer my questions.

7           MR. MULLER: That's all I have.

8           THE COURT: Any cross examination?

9           MR. McCORMACK: Yes. Thank you.

10

#### 11                           CROSS EXAMINATION

12

13 BY MR. McCORMACK:

14           Q Detective Bailey, what's your current role with  
15 the Harrisburg Police Department?

16           A I'm a detective assigned to the internal  
17 affairs unit.

18           Q And the role that you played on December 20,  
19 1996 you were a patrol officer, correct?

20           A Yes, sir.

21           Q Having been in both positions, both as a  
22 detective and as a patrol officer, the patrol officer's  
23 role is essentially you were securing the scene and  
24 getting initial information; is that correct?

25           A That's correct, sir.

1       Q    A detective would later follow up with more  
2 detailed interviews, actually having people do  
3 statements and those sorts of things; is that correct?

4       A    Yes, sir.

5       Q    Now, do you recall how, when you were speaking  
6 to Socorro Roman, how she was, what her demeanor was?

7       A    Honestly I don't really. I think from what I  
8 remember she was rushed because she had some  
9 responsibilities or something to do with her grandson  
10 at that time.

11      Q    And, in fact, what you went over with  
12 Mr. Muller about what she had said, she said she  
13 discovered Iris on the first floor rear room; is that  
14 correct?

15      A    If that's what's in the report, yes.

16      Q    I'll show you a copy of your report.

17      A    Yes.

18      Q    The rear room is actually above the kitchen?

19      A    From what I remember about that residence, you  
20 go downstairs into -- I wouldn't call it the basement  
21 area but you walk downstairs into the kitchen, which is  
22 on the lower level and the bedroom is on the first  
23 level like when you walk to the front door and going to  
24 the rear that's where the bedroom is. You can go to  
25 the lower level and that's where the kitchen was

1 located.

2 Q Being one of the first officers to arrive, the  
3 scene was a little chaotic?

4 A Yes, sir.

5 Q Took a little time to sort through things, sort  
6 things out?

7 A Yes.

8 Q Do you recall family members of Iris's coming  
9 to the house seeing what was going on?

10 A Yes.

11 MR. McCORMACK: Thank you, Detective Bailey. I  
12 don't have any further questions.

13 MR. MULLER: Just briefly.

14

15 REDIRECT EXAMINATION

16

17 BY MR. MULLER:

18 Q My calculations back in 1996 you would have  
19 been a police officer for approximately ten years?

20 A Ten years.

21 Q You had certainly done a number of reports by  
22 that point, right?

23 A Yes.

24 Q And the purpose of a report was to take down  
25 accurate information?

1 A At that time I would note the date on my  
2 report, what someone told me or if it was my  
3 observations. It would be accurate as to what I saw.  
4 If it was an interview it would be what someone told me  
5 that I would document in my report.

6 Q In regards, Mr. McCormack asked, Ms. Roman told  
7 you that she went in through the rear door?

8 A That's what's indicated in my report. That's  
9 what she told me.

10 MR. MULLER: Thank you.

11 THE COURT: Anything else?

12 MR. McCORMACK: No further questions, Your  
13 Honor.

14 THE COURT: Thank you, detective.

15 MR. MULLER: May she be excused?

16 MR. McCORMACK: I have no objection.

17 THE COURT: Detective, you may be excused.

18 MR. MULLER: Defense would recall Officer  
19 Joseph Zimmerman.

20 THE COURT: Officer, just to make sure you  
21 understand, you're still under oath from when you were  
22 already sworn.

23 THE WITNESS: Yes, Judge.

24

25

1 DIRECT EXAMINATION  
2

3 BY MR. MULLER:

4 Q Officer Zimmerman, you were initially involved  
5 in the case, correct?

6 A Correct.

7 Q Back on December 20th?

8 A Correct.

9 Q On December 20th, was contact made with  
10 Guillermmina Cruz, aka Toothie?

11 A Yes.

12 Q And you were one of the officers present when  
13 this contact was made?14 A I can't remember where the contact was made. I  
15 just remember I interviewed her.

16 Q Do you recall who else was there?

17 A During the interview?

18 Q The contact interview, whatever.

19 A No, I don't.

20 Q After she then went home that day?

21 A I believe she did. I can't remember.

22 Q Let me rephrase it. Did you have contact with  
23 her the next day?

24 A I did not. Another -- Detective Massey did.

25 Q Did you have contact with her the following

1 week?

2 A I'd have to refer to my report, but I don't  
3 recall.

4 Q Was your -- your involvement in this case, how  
5 long did it last?

6 A My involvement lasted approximately four days.

7 Q After that someone else was taking the  
8 information, doing whatever, correct?

9 A Correct.

10 MR. MULLER: That's all I have.

11 THE COURT: Cross.

12 MR. McCORMACK: No cross examination.

13 MR. MULLER: We need to check to see if our  
14 next witness is here. May we approach?

15 THE COURT: Yes.

16 MR. MULLER: We hit a bit of a snag, Your  
17 Honor, in terms of availability of the witness.

18 THE COURT: We'll try to start up about ten  
19 after one. Please put your notebooks back in the  
20 envelopes and we'll take our lunch break. Again no  
21 talking about the case, no talking about the evidence,  
22 avoid all outside influences and, of course, keep an  
23 open mind until the case is complete. We stand in  
24 recess until 1:10 p.m.

25 (The jury exited the courtroom at 11:41 a.m.)

Monday, September 19, 2005

## Afternoon Session

THE COURT: Mr. Muller,

MR. MULLER: Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. Love.

THE DEFENDANT: Good afternoon, Your Honor.

MR. MULLER: Pursuant to a pre-lunch

9 conversation, we have chosen now is the time to ask  
10 Mr. Love, to colloquy him about testifying or not  
11 testifying.

12 THE COURT: Do you want to do that or do you  
13 want me to?

14 MR. MULLER: I can start it.

15 Mr. Love, you understand that you have the  
16 right to testify in your defense or not to testify.

17 THE DEFENDANT: Yes.

18 MR. MULLER: You and I have had discussions  
19 about this matter.

20 THE DEFENDANT: Yes.

21 MR. MULLER: And since we are approaching the  
22 conclusion of the case, what is your decision as far as  
23 testifying?

24 THE DEFENDANT: Based on the advice of my  
25 attorney, I feel that there's no need for me to testify

1 because of my numerous statements for which I told the  
2 truth anyway.

3 MR. MULLER: You're making a decision not to  
4 testify. Is that what you're telling the Court?

5 THE DEFENDANT: Correct, based on your advice.

6 MR. MULLER: I understand.

7 THE COURT: And you said you've had an  
8 opportunity, Mr. Love, to talk this over with  
9 Mr. Muller and you said based on his advice, I trust if  
10 you have any questions about your decision you've had a  
11 chance then to ask those of Mr. Muller and he has  
12 answered them to your satisfaction; is that right?

13 THE DEFENDANT: I understand. I think I  
14 understand.

15 THE COURT: I can't hear you.

16 THE DEFENDANT: I believe I do understand. I  
17 believe he was pretty clear. I told him I don't have  
18 any questions about testifying or not testifying. I'm  
19 going by his advice based on what's going on for what  
20 he explained to me.

21 THE COURT: I assume -- do I take from what you  
22 just said you and he did talk about both the pros and  
23 cons, the goods and bads of choosing to take the stand  
24 or not to testify.

25 THE DEFENDANT: Pros and cons?

1 MR. MULLER: The Court's indulgence.

2 THE COURT: Sure. Yes. All right. Is there  
3 anything further?

4 MR. MULLER: No, Your Honor.

5 THE COURT: Thank you, Mr. Love. Are we ready  
6 for the jury? The record should reflect, Mr. Muller,  
7 although he had I guess not signed or filed a motion at  
8 the time earlier this morning, we did address the  
9 motion in limina that you submitted with respect to  
10 certain testimony that was offered or might have been  
11 offered by the Commonwealth and with the agreement that  
12 Mr. McCormack, I believe, all of the issues that you  
13 raised were in fact agreeable to the Commonwealth and  
14 therefore by stipulation the motion was granted.

15 MR. MULLER: That's correct, Your Honor.

16 MR. McCORMACK: Can we approach briefly, Your  
17 Honor?

18 THE COURT: Sure.

19 (A discussion is held at sidebar off the  
20 record.)

21 (The jury entered the courtroom at 1:19 p.m.)

22 THE COURT: Be seated. Welcome back again,  
23 ladies and gentlemen. Mr. Muller.

24 MR. MULLER: Thank you, Your Honor. Defense  
25 would call Investigator Massey.

1                   ELIJAH QUINN MASSEY,  
2 having been sworn, was examined and testified as  
3 follows:

4

5                   DIRECT EXAMINATION

6

7 BY MR. MULLER:

8       Q    Investigator, I realize you've already  
9 testified. Give us your name and occupation again.

10      A    Elijah Quinn Massey, M-A-S-S-E-Y, I'm a  
11 detective with the Harrisburg Bureau of Police assigned  
12 to the Criminal Investigation Division.

13      Q    And as I think was established with the  
14 Commonwealth you were involved in this case at its  
15 inception, correct?

16      A    Yes.

17      Q    Now, on December 20th, did you have an  
18 opportunity to be present for or take a statement from  
19 Guillermina Cruz?

20      A    According to my report on December 21st, which  
21 was a Saturday, I took a statement from her which is  
22 2305 hours. Your time would be 11:05 p.m.

23      Q    Okay. And this was a reinterview or something  
24 to that effect. She had already given one statement,  
25 correct?

1 A Yes.

2 Q In that first statement she had said she was  
3 with Tyshaunt but she wasn't at the house?

4 A That's correct.

5 Q The victim's house, and on the 21st when you  
6 had her in, she told you that she had lied the day  
7 before, correct?

8 A Yes.

9 Q Was she to come in and give a written statement  
10 after the 21st?

11 A I don't know about after the 21st with another  
12 detective. I think she did come in to provide a formal  
13 statement which may have been taken on the same  
14 evening. On the 28th of December she came in and gave  
15 a formal statement.

16 Q She didn't come back until the 28th?

17 A That's correct.

18 Q Were you present then?

19 A I don't think I took that statement from her.  
20 Two of my colleagues might have taken the statement  
21 from her.

22 Q Were you present?

23 A Not during the statement. I was present during  
24 the 21st. I conducted that interview.

25 Q Do you know where she had been between the 21st

1 and the 28th? Has that ever been determined?

2 A No. I did have contact with her on the 28th.

3 That was --

4 Q I'm sorry on the...

5 A On the 28th of December.

6 Q Let me ask you this, when you were at the scene  
7 in the kitchen -- you've seen pictures and things -- do  
8 you recall if there was any furniture in the kitchen?

9 A I don't recall much furniture being there. It  
10 was too long ago. It was a very small kitchen. There  
11 was a refrigerator, stove, oven in the kitchen and a  
12 cupboard in addition to the bag of clothes or with wet  
13 rags found between the refrigerator and the cupboard.  
14 Anything other than that I really don't remember.

15 MR. MULLER: That's all I have.

16 MR. McCORMACK: No questions, Your Honor.

17 THE COURT: Thank you, detective.

18 MR. MULLER: Your Honor, the only thing left is  
19 a stipulation I discussed with Mr. McCormack; that on  
20 January 17, 1997 there was a preliminary hearing in  
21 front of a district justice where Miss Cruz,  
22 Guillermina Cruz was called to testify under oath and  
23 at which time she testified that she had been with  
24 Mr. Love the evening of the 19th and the morning of the  
25 20th. But she had not gone to the victim's house, Iris

1 Fennel's house. In fact, they split after she left  
2 this Balm Street address. She went home and he went  
3 his way.

4 MR. McCORMACK: That's correct.

5 THE COURT: That was on January 27th.

6 MR. MULLER: January 17, 1997.

7 THE COURT: All right. Is there anything else?

8 MR. MULLER: No. We rest.

9 THE COURT: Any rebuttal testimony,  
10 Mr. McCormack?

11 MR. McCORMACK: No rebuttal testimony from the  
12 Commonwealth, Your Honor.

13 THE COURT: All right. Are we ready to proceed  
14 then with closing arguments.

15 MR. MULLER: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen, we're  
17 approaching the time when I can take the gags off but  
18 we're not there yet. The evidentiary phase of these  
19 proceedings are now concluded. We're going to be  
20 moving into arguments of counsel.

21 At this point as I told you at the beginning of  
22 this case the order of presentation is reversed. Now  
23 the Defendant's counsel has an opportunity to speak to  
24 you first followed by the prosecution counsel. You  
25 should listen carefully to what these lawyers have to

1 say. You've heard from numerous witnesses. You heard  
2 references to numerous exhibits.

3 The lawyers have an obligation and right to  
4 discuss with you the evidence now applying logical  
5 means in their arguments how they believe the evidence  
6 should lead you to a conclusion most favorable to the  
7 side that one or the other represents.

8 What the lawyers tell you during their closing  
9 arguments is not testimony. It's not evidence, and you  
10 should not accept it as such. You can -- you should  
11 listen carefully. It may help you to understand the  
12 evidence that you have heard, may help put it all  
13 together. You should be guided by what one or the  
14 other lawyers may tell you in their closing argument  
15 but you are not obligated to follow and agree with what  
16 either of the attorneys tells you. They are simply  
17 presenting their view of the evidence as they heard it  
18 and it is what you heard collectively that must guide  
19 your decision making in this case.

20 Mr. Muller, are you ready to proceed?

21 MR. MULLER: May we approach just briefly?

22 (A discussion is held at sidebar off the  
23 record.)

24 THE COURT: You are also, by the way, not  
25 permitted to take notes during this segment of the

1 trial. In fact, you're not able to take notes during  
2 the closing arguments nor my instructions to you on the  
3 law of this case, which will come either later this  
4 afternoon or tomorrow morning.

5 For now just put your notebooks in the  
6 envelopes along with the pens and we'll collect them  
7 right now and return them to you as you begin your  
8 deliberations. Before you begin, everyone in the  
9 courtroom now knows I assume once we begin this stage  
10 of the proceeding, there's no going in and out.

11 MR. MULLER: Thank you, Your Honor.

12 Where to begin? I don't want to belabor a lot  
13 of things. Obviously there were a lot of witnesses and  
14 a lot of evidence introduced. Where does it all lead?  
15 Start with the day before. Iris is fine. You haven't  
16 heard any testimony about there being any problems that  
17 day anywhere. The first confirmation we have of  
18 anything is that Iris is with Tyshaunt at Fav's bar  
19 around 11. You've heard that from any number of  
20 witnesses regarding them both being there at that time,  
21 and certainly you didn't hear anything about there  
22 being problems with Iris at that point or anything  
23 happening.

24 Who is more accurate? Who is to be believed?  
25 Use your common sense. Do you think what these people

1 told the police and others back in 1996 may have been a  
2 little more accurate than what they tell them in 1999,  
3 2001, 2003, 2004, are just some of the dates these  
4 other statements were given.

5 Do you think someone was more accurate when he  
6 said we saw them there at the bar at around the same  
7 time and we saw them leave -- I'm sorry -- we saw Iris  
8 leave but Tyshaunt was still in the bar for a while?  
9 They didn't leave together. That was the testimony --  
10 okay -- from a witness who talked to the police the day  
11 after the incident.

12 If you go by the testimony of Tawana Poteat or  
13 any of the others that gave statements later, she's the  
14 only one who says they left the bar together, and when  
15 did she give that statement? I don't have it written  
16 down but it was approximately 2001. This is so  
17 important to her and she has this vital information for  
18 five years. Later she remembers it and she tells the  
19 police.

20 That night before where did Tyshaunt end up?  
21 His own statements, through the testimony of  
22 Guillermina Cruz they end up together at this house on  
23 Balm Street some time. It really was some time after  
24 midnight if you go by all the statements. Some time  
25 after midnight they are over at Balm Street. As to

1 exact times there are no exact times. The closest we  
2 got out of the testimony or out of the statements was  
3 from Investigator Taylor and his taking the statement  
4 from Mr. Love about getting a ride from the pizza guy  
5 at 12:30 to check on the house. That makes sense. He  
6 gets there before one and Iris isn't there. We know  
7 that's true. How do we know it's true? Johanna  
8 Johnson, the first witness here who testified, she was  
9 on the phone or -- I'm sorry -- actually she tried to  
10 call Iris on the 19th. She tried to call her at 10:00.  
11 She tried to call her at 11:00. No answer. The phone  
12 was never picked up. She finally reached her at 1 a.m.  
13 on the 20th. About Iris not hearing the phone and  
14 Johanna saying she knows she wasn't there and we know  
15 she wasn't there at least part of that time because of  
16 the Giant food receipt showing she had been at Giant  
17 some time between 11:15 and 11:30 that night buying  
18 items.

19 1 a.m. to 2:30 are the times that are exact in  
20 this case, and we know that because Johanna Johnson  
21 gave that statement that day, the day after when she  
22 talked to the police. She was very specific about what  
23 had happened, what she knew. She's the one who places  
24 Iris back in her apartment after one; talking for 45  
25 minutes then hanging up and then calling back in ten

1 minutes and then talking until 2:30, and what happened  
2 in that period of time? One, Iris was alone. Two, at  
3 2:30 someone comes to the apartment. Iris is worried  
4 at first because someone is tapping on the window. She  
5 tells Johanna that. She let's whoever it is in and she  
6 tells Johanna it's okay. It's a male friend, but she  
7 indicated to Johanna it wasn't a romantic friend and  
8 she said the name and Johanna couldn't remember what  
9 the name was but she knows Tyshaunt, she knew his  
10 nickname was Cuzzo, and she was sure it wasn't Cuzzo,  
11 and it couldn't have been. If Iris would have said  
12 that Johanna would have known. This was some other guy  
13 coming to her house at 2:30.

14 What's going on at 2:30? Well, there's a  
15 chicken in the oven. We know that. Johanna tells you  
16 that. We know that from the receipt.

17 The items purchased were a roaster for \$5.38,  
18 along with stuffing and muffins or rolls. The things  
19 you saw up there being cooked. She is cooking the  
20 chicken. She asks Johanna, I got the chicken in the  
21 oven. How much longer is it going to be? Johanna  
22 tells her it's only going to be a little while. We  
23 know the chicken is cooking at 2:30. We know it's  
24 close to getting done at 2:30. If Iris were killed  
25 later, go by this testimony from Guillermina Cruz from

1 the preliminary hearing three years ago, if you go by  
2 that, they didn't get there until the next morning.  
3 Some time sounds like between 9 and 11. It's hard to  
4 tell what the exact time that Guillermina thinks they  
5 went there.

6 Iris is still cooking according to Guillermina  
7 at the stove, and this whole thing takes place. Do you  
8 really think that Iris was alive after 2:30, that she  
9 wouldn't have taken that chicken out of the oven? Do  
10 you think that chicken was sitting there for eight  
11 hours without Iris doing anything with it? The only  
12 thing that makes sense is, yes, there was a chicken in  
13 the oven. It was cooking. She's killed. She can't  
14 take it out of the oven. And she's killed at 2:30 in  
15 the morning the last contact anyone has with her.

16 In regard to witness testimony, Guillermina  
17 Cruz, the Commonwealth's main witness in their case,  
18 she's gone. She's left. She wouldn't show up, you  
19 know. Put whatever face you want on it. She wouldn't  
20 come in.

21 What do we get? We get her testimony in front  
22 of a district justice three years ago about this. Her  
23 sitting there, a couple of other people in the district  
24 judge's office and her giving this version of the  
25 events which she had the opportunity to come in here in

1 front of 12 people to sit up there under oath and under  
2 cross examination and tell what had happened. She  
3 refused. It's easy to go and say something to the  
4 police or it's easy to go and say something in a small  
5 room to just a couple of people. When she had the  
6 chance to come here she refused to. Why do you think  
7 she refused to come here and face you? It had nothing  
8 to do with Tyshaunt. You know that. He had nothing to  
9 do with it.

10 The only thing we heard out of all the  
11 testimony as to threats to her were from Anthony,  
12 Black, her boyfriend; Socorro Roman gives four  
13 different statements. Which is the only plausible one?  
14 How about the first one she gives. She got up around  
15 8:00. They went out at 11:45 to clean the cages, the  
16 dog cages out back. She went out with Zach. Zach puts  
17 the time at 11:55 when they go out to do that, and  
18 right away Zach sees smoke, smells smoke and he runs  
19 over.

20 Well, he smells it and he sees it because  
21 Mr. Love has already gone into that kitchen in the back  
22 door. Him opening the door the smoke has come out,  
23 burnt smell has come out, because it was cooped up in  
24 that apartment. After going over there the only thing  
25 that makes sense from Ms. Roman's testimony and

1 Zachary's testimony is there initial stories.

2       Zachary runs over there. He goes into the  
3 place. Tyshaunt is in there coming out. The  
4 Commonwealth tries to make a big issue of Zachary  
5 saying he saw him go up and then came back down.  
6 According to Zachary, depending on which version you  
7 want to believe, he did go over there after telling --  
8 he did see Mr. Love in the apartment, which is  
9 consistent with what Mr. Love told the police. He was  
10 coming out to get help.

11       Why the back door? Well, the front door is  
12 just an alley. You saw that picture. The back door  
13 where everyone is it's out back. Indeed that's where  
14 he found people, and what happens according to the  
15 testimony? Zach runs back to Socorro's house and right  
16 behind Zach is Tyshaunt following him there. So the  
17 911 call can be made according to Zach, and at one  
18 point Socorro, and then Tyshaunt goes back with Socorro  
19 because she's going to check on things. Socorro has  
20 her grandson at this point, she goes in there,  
21 remember, and she puts her grandson in the living room.

22       They go in there to check on Iris. Socorro  
23 determines that Iris is dead at that point. After  
24 Socorro sees, you know, she left at some point and then  
25 came back and I guess that's supposed to be the

1 plausible story because that's when Tyshaunt had a  
2 chance to change the scene. The scene wasn't changed.  
3 Socorro never left Tyshaunt. Okay. And essentially  
4 not for long enough for anything to happen.

5 She said she had already left before an  
6 ambulance and police get there. You heard the  
7 stipulated testimony from the EMS technician. He got  
8 there, knocked on the door, Socorro opened and he went  
9 in and Socorro was there. He referred to a Hispanic  
10 female, you know. From the testimony there was one  
11 Hispanic female and that was Socorro and Tyshaunt was  
12 in there as well. The EMS technician went in there.  
13 The first thing he does is lift the arm up to see if  
14 there's rigor. He lifts the arm up of the victim.

15 Now, Investigator Taylor testified there was a  
16 sheet covering her from the waist down. The EMS guy is  
17 not real clear on if there was or wasn't a sheet. This  
18 whole issue of the body being moved and it must have  
19 been Tyshaunt doesn't make sense with the evidence.  
20 Whoever was there early that morning and killed Iris,  
21 you don't know how long they were there. You don't  
22 know how long they were there looking for something and  
23 you don't know what they decided to do with that body  
24 before they left or when they left.

25 Dr. Ross made no determination of time of death

1 or, you know, when rigor mortis set in. You don't have  
2 that on the record as to when that happened. Could it  
3 have set in before whoever did this left? Yes. But  
4 it's a person that was there at 2:30 that morning. The  
5 big question is who would have been there and how did  
6 Guillermina know anything? Or why did she say anything  
7 about being there? Well, the first question is was  
8 Guillermina really there. In her statements that came  
9 in or her testimony she said she sat at the kitchen  
10 table while all this happened. One statement she said  
11 she just sat there and waited for Tyshaunt to come  
12 down. Another statement she said she went up part way  
13 to watch what happened and all those things. You seen  
14 the pictures though, and you'll have them available to  
15 you in deliberations.

16 Investigator Massey just told you that's a  
17 small kitchen, 7 by 9 feet, whatever the dimensions  
18 are. There was no table in that kitchen, and she was  
19 never in the kitchen. Who would Iris let in the  
20 kitchen -- apartment at 2:30? It wasn't someone she  
21 wasn't afraid of. How about someone like Anthony  
22 Knight, someone she's friendly with? And then when  
23 she's worried before she hangs up with Johanna Johnson,  
24 is she worried she sees Kazar coming in with Anthony?  
25 That's maybe a few minutes later. I don't know. You

1 don't know. They don't know.

2 Kazar, I mean, it's a heck of a coincidence he  
3 gets back into town that week, a week before. He knows  
4 Iris is the one that snitched on him before when he was  
5 on the run. She is the one who called the police.  
6 She's the one that told him where he was. He knows  
7 that, you know that through Candace. You know that  
8 through Investigator Heffner confirming who narked on  
9 him. When he gets back into town Candace ends up  
10 staying with her friend, soon to be ex-friend Iris.  
11 Who does she let come over? Kazar. What have you  
12 heard everyone testify to about how Iris felt about  
13 Kazar. She's scared of him. The mere mention of his  
14 name made hair on her arm stand up. She didn't want to  
15 go around him. Why did she let him come there? Well,  
16 because Candace was there. Candace was her friend.  
17 She was letting him stay there a couple of nights  
18 because Candace was there.

19 Now, Kazar apparently like everyone else knows  
20 who's doing what, who's dealing drugs and what's going  
21 on with that; because according to Kwajalyn Jackson her  
22 conversation with Iris the morning of the incident or  
23 before, Iris tells her Kazar was here this morning. He  
24 was saying I know you're the one that snitched on me  
25 and he wanted money from me..

1           What's missing from the apartment later?  
2 Money, lots of monies. She's gotten it out from  
3 Daelene Saez's place apparently. She spent some of it  
4 because there are Christmas gifts. Gifts for her  
5 daughter that were being talked about but nothing else  
6 is found.

7           Who has blood on them? Kazar. There's no  
8 other explanation as to how Kazar got Iris's blood on  
9 his boot. There's no other explanation. He's picked  
10 up a day, day and a half later and he still got blood  
11 on his boot. He's got blood, his own blood on his own  
12 clothing. I don't know. Where do you think that came  
13 from? Maybe because someone was fighting him getting  
14 defensive wounds, hitting him, cutting him, getting his  
15 own blood on himself. Her blood is on him. His own  
16 blood is on him.

17           Tyshaunt is taken in that day when this all  
18 happened. According to the testimony that was brought  
19 out he was wearing the same thing when they picked him  
20 up as he was wearing the night before at Fav's.  
21 There's no blood on him anywhere. Mr. McCormack  
22 described this I think in his opening as a bloody  
23 scene. Blood in the kitchen, blood on the stairs,  
24 blood in the bedroom, blood in the living room, and  
25 this woman was viciously beaten, how much blood she

1 lost.

2           But do you think if that happened maybe if  
3 Tyshaunt was the one who did it there would have been  
4 some trace on his clothing of her blood? What about  
5 some marks on Tyshaunt? You saw the pictures of the  
6 victim. I mean, other things if you notice she had a  
7 lot of rings on and things. Okay. You heard her  
8 described as feisty. She wouldn't put up with anything  
9 from anyone. She would fight for her life.

10           According to Dr. Ross there were 28 defensive  
11 wounds showing that's what happened. They are saying  
12 the person that does it, Tyshaunt, has no visible  
13 injuries. They took all his clothes, tested and  
14 retested them in '96, tested them again in 2001  
15 when there was better technology.

16           Iris's blood is not on him, and yet he's  
17 supposed to be the one who has done this. Dr. Ross,  
18 the forensic pathologist, testified to the condition of  
19 the body and those things, and among other things what  
20 he told you is she was strangled. Remember the broken  
21 bone in the neck area, the hand imprints on the right  
22 side, linear contusions on the neck, etc., etc., she  
23 may have died from the gunshot wound but obviously  
24 before that someone tried to choke her too.

25           Who do we know that's strangled someone before?

1 Kazar, LaQuan Williams. You heard it through Candace  
2 Mills. He tried to strangle her before, Kazar, who is  
3 in town that week; Kazar, who knows where Iris lives  
4 now; Kazar, who knows Iris is dealing drugs and  
5 apparently doing very well at it.

6 After -- let me go back. Look at another of  
7 those witness statements again. Jeanette McCurdy, the  
8 older woman who testified on Tuesday, the neighbor who  
9 says Zach and/or Socorro came out and told her to call  
10 911. What did she tell the police that day? That they  
11 came over. She was out with her dog. They came over  
12 and asked her to call 911. She shared nothing out of  
13 the ordinary and nothing additional at that time.

14 Seven years later she gives a statement where  
15 she said not only did that happen, a young Hispanic  
16 male come out and this gentleman had come out with her  
17 and this was ten minutes before all this happened with  
18 the fire. Do you think maybe back in 1996 when this  
19 actually happened if that had been the indication they  
20 would have mentioned that. Oh, yeah, ten minutes  
21 before this fire these two people ran out and you found  
22 a dead body and did I tell you ten minutes before this  
23 two people ran out. She only comes up with it seven  
24 years later after she had been at one of those  
25 preliminary hearings and seen and heard from

1 Guillermo Cruz and seen Mr. Love. I mean, use your  
2 common sense. It's not plausible. The same with Stacy  
3 Harris; Stacy Harris, who said the night of the  
4 incident she heard a scream and gunshot around 2:00 in  
5 the morning. Well, that matches some of the other  
6 evidence especially Johanna's statement of what was  
7 going on when.

8 December 20, 1996, Stacy Harris says she hears  
9 a gunshot and a scream at around 2 in the morning. I  
10 didn't go check on it. I didn't want to go check on  
11 it. Years later, 2002, she goes up to Investigator  
12 Heffner, oh, I have more information; talks to him.  
13 The next day, you know, my memory is not good about  
14 that time. I don't really know anymore. A year or two  
15 years after that, 2004, Investigator Heffner interviews  
16 her, and we have another example of a case of being  
17 incredible recovery memory syndrome. The tainted  
18 memory; two years before people said my memory isn't so  
19 good at the time. Later I heard a gunshot and scream  
20 at 2:00. I actually heard something and it was after  
21 5:00 or 7:00, whatever the case may be, and by the way,  
22 I then went out and looked around the corner and I  
23 looked down the street and someone was running away  
24 from me in a hoodie. They turned briefly and I know it  
25 was Tyshaunt. I don't know why she would go that way?

1 But once again use your common sense. Do you think she  
2 knew what was going on in 1996 and it was fresh in her  
3 memory? Do you think this recovered memory in 2003 is  
4 the accurate one?

5 Tamara Williams, Iris's sister, I don't  
6 honestly know what her testimony was because it wasn't  
7 consistent from one statement to the next or one answer  
8 to the next when she was up there. She tells us that  
9 she had seen her sister some time in the month or two  
10 before and that her sister had a black eye and told her  
11 that Tyshaunt had hit her. Apparently this was around  
12 the same time that Daelene Saez says Iris had a red  
13 puffy eye and didn't say that Tyshaunt had hit her,  
14 which brings us right back to where we were.

15 Incredibly feisty woman hung around Tyshaunt  
16 for -- at that time for a year, all fighting, breaking  
17 up and getting back together. I know one of the  
18 witnesses said he was always around her and my question  
19 to her after that, by the same token, she was always  
20 around him.

21 Commonwealth brings us an incident two months  
22 before from Barbara Brown. She's in the KFC parking  
23 lot. There's an incident where Tyshaunt punches a car  
24 window saying if I can't have you no one can. In fact,  
25 in their opening that's the case. This is him that

1 made the remark back then. He must be the one that  
2 killed her. It doesn't connect. Barbara Brown  
3 remembers one incident and all of a sudden that's the  
4 Commonwealth's case.

5 Candace Mills testified she talked me out and I  
6 talked to her and she already kicked Tyshaunt out and  
7 she had packed his stuff. And according to Candace it  
8 was three days before this happened and nothing  
9 confirms. What did the police do and what didn't the  
10 police do?

11 Well, how about trying to check up on what  
12 Tyshaunt was telling them? How about going to Balm  
13 Street and checking with this pop-pop, who,  
14 Guillermina, according to her testimony, verifies that  
15 they were there together. How about going there and  
16 saying, were these two here? When were they here?  
17 When did they leave? You don't know that because the  
18 police didn't do anything with that. They are suspects  
19 and their main witnesses are saying the same thing.  
20 Hey, we were here, and Guillermina never takes that  
21 back, changes her story about where she was the next  
22 day. She never changes that. No one ever goes there.  
23 1996 no one goes there to say, were they here? And  
24 maybe if they were here when did they leave? What  
25 happened?

1        You don't know. I don't know. They don't  
2 know. I don't remember if it was her preliminary  
3 hearing testimony or what, Guillermrina Cruz had stated  
4 she, Tyshaunt and the other went upstairs for the  
5 night. She stayed on the couch downstairs. So she  
6 can't account for Tyshaunt but the reverse is true too.  
7 No one can account for her whether she left the  
8 apartment that night and came back. No one knows. No  
9 one talked to pop-pop. No one went over there and  
10 asked.

11       Shavetta Maynard and Ms. Poteat, Tawana Poteat  
12 is silent by pinning their time line on some of this  
13 the next day saying about when they got up. They  
14 always get up around 5:00, drug trade. That day they  
15 didn't get up until 8 or 9. They went looking for  
16 Iris. They ended up in Fav's, and that's when they saw  
17 Tyshaunt, and it had to be 9:00 that they were there.

18       Mr. McCormack made a big deal in his opening  
19 about what he was doing between 9 and 11:30 if he was  
20 so concerned about her, go look for her if he wasn't  
21 there at 9:00.

22       Bear with me, their other witness, I think,  
23 Wendy Harris who sees Tyshaunt by the Five and Ten the  
24 next morning on Market Street, and when does she see  
25 him there? Sometime Around 11 or after 11. Who else

1 does she see down there at Fav's? Shavetta and Tawana.  
2 They are there too. She told the police that on the  
3 20th or 21st in 1996. Tawana gives her statement four  
4 or five years later about her times and what she saw.  
5 In fact, the day they talked to her then she didn't  
6 offer any of that information or anything like that.

7 Mr. Love in his statements gives various times  
8 where he was and when he was. Maybe he's not going to  
9 but I would suspect that Mr. McCormack's comments on  
10 when that was read is going to read it trying to create  
11 an alibi. Look at what he's saying.

12 You also heard Investigator Taylor. He just  
13 talked and talked. You're a talker. Maybe he did the  
14 only thing to confirm out of that, at 12:30 he went  
15 over and saw the clock in the car of the pizza delivery  
16 guy. That's the one time he went over to check on  
17 Iris, the one time.

18 When she sees -- I'm sorry -- back to Wendy  
19 Harris. She went to check on Iris around 11:00 that  
20 morning. Went there, smelled smoke, didn't think  
21 anything of it. And then left, went to Market Street.  
22 That's when they saw Tyshaunt, which makes perfect  
23 sense.

24 Whenever Tyshaunt left pop-pop's on Balm  
25 Street, Guillermina's testimony was read in, something

1 about I saw school buses and kids at the bus stop. It  
2 must have been when school buses were running. I mean,  
3 that's 7:30 or 8:30. That can be 11:30 or 12 for  
4 kindergarten classes. Yes. We don't know. She wasn't  
5 here to explain it.

6 And the recovered memory continues because then  
7 we had Officer Muldrow, who had a one-page report that  
8 we read to him where he said Mr. Love told him the  
9 victim was in the other room or something to that  
10 effect. But he said that and then he said, no, Zachary  
11 found her. No, I found her. In all of this no one in  
12 the report -- the report was concise. Mr. Love told me  
13 this, and on and on with his testimony.

14 Nine years later Officer Muldrow is the  
15 brainiac. He's got everyone up there now. He's got  
16 the incredible memory not to put in the report at the  
17 time maybe those are important facts. But to get up  
18 here nine years later knowing Mr. Love is on trial and  
19 to testify to that.

20 Guillermina gives a statement and initially  
21 saying I was with Tyshaunt at the Balm Street address.  
22 I didn't go to Iris's. But she says, no, I wasn't with  
23 him that morning, and it was the first chance to  
24 testify about it. So I lied again. He was with me. I  
25 wasn't there. I never went over there. I didn't see

1 any of it and on and on throughout the years, whether  
2 testifying to a grand jury, telling another story at  
3 the preliminary hearing later and telling another  
4 story.

5 She's not here to explain it. She didn't show  
6 up for you to see what kind of person Guillermina is.  
7 The facts don't fit the Commonwealth's evidence. They  
8 are trying to tell you that this guy who is described  
9 by one of the witnesses, Candace, something to the  
10 effect he's a nerd; he's a wimp, something like that.  
11 Everyone described her as, Iris, feisty, would fight  
12 back, wouldn't put up with anything.

13 We're to believe that Tyshaunt Love is the one  
14 who went over there, who beat her to death or shot her  
15 to death, who left and for some reason taking  
16 Guillermina with him to see all this yet didn't get any  
17 blood on him and nothing happened to him because he  
18 wasn't there. He was never there that morning. He's  
19 not the one that's there when Iris is talking to  
20 Johanna. He's not the one that comes in or does  
21 whatever. Someone comes in. He's not the one that's  
22 there. Even their main witness, Guillermina, her own  
23 story, things that happened at 9:00 the next day, which  
24 is inconsistent with the physical evidence. All the  
25 physical evidence in this case indicates whatever

1 happened happened that morning around 2:30, some time  
2 right after 2:30, something happened, someone was there  
3 to do it and it wasn't Tyshaunt.

4 When Guillermina gives her statements she gives  
5 a first one to Massey. It takes in the next day and it  
6 was Tyshaunt and she disappears for five or six days,  
7 and I think we heard from someone at some point she's  
8 with Black, her boyfriend, Anthony Knight.

9 Then on the 21th of December -- 28th she comes  
10 back. She's got the details. She's got all the  
11 details of what happened. How does it happen? How  
12 does she have the details down and not earlier. All we  
13 know was Guillermina was there. Guillermina doesn't  
14 tell you that.

15 In 2001 they resubmit everything for testing.  
16 January of 2001 the DNA comes back and it's not the  
17 merely probably whether it was one in 600 chance. Now  
18 the chance that it wasn't Iris's blood on Kazar is  
19 2.86. Mr. McCormack said in his opening said  
20 probably, probably is her blood; now one in two  
21 quintillion it's her blood. It's on his boot.

22 Just briefly Tyshaunt is the only person in  
23 this case who gave statements that doesn't get better  
24 over time. He's the only one who gave statements  
25 between the years, wasn't as detailed, didn't get more

1 details which is ordinary. Something happened in 1996  
2 and then you talk about in 2002. You're not going to  
3 be consistent with all the details. You're not going  
4 to remember all the details.

5 The only statement we have from Mr. Love is  
6 different as the one in 1998, that wasn't recorded,  
7 that wasn't written down, that wasn't given to Mr. Love  
8 to review for accuracy. The only one that's  
9 inconsistent. It's at least reliable for what is said  
10 and for what is in it.

11 You were able to take notes. You can look at  
12 your notes to see what you remember or what happened if  
13 it's not addressed here. I can't possibly go over  
14 everything. I can only tell you where the evidence  
15 leads that had been presented.

16 The Commonwealth has the burden of proving  
17 beyond a reasonable doubt. You have come to the  
18 conclusion that Tyshaunt Love killed Iris Fennel.  
19 That's what they are saying. He's the one who killed  
20 her. You have to believe that beyond a reasonable  
21 doubt. They haven't proven that in 2000. If you  
22 suspect someone has done something, if you think  
23 somebody has done something that's not a reasonable  
24 doubt. The Judge will explain those issues to you.  
25 I'm not going to belabor it. Ultimately that's what

1 this comes down to. Did they prove to you beyond a  
2 reasonable doubt that Tyshaunt Love was there and that  
3 he killed Iris Fennel? Now, they couldn't because he  
4 wasn't there.

5 THE COURT: Thank you, Mr. Muller.  
6 Mr. McCormack.

7 MR. McCORMACK: It will take me a few minutes  
8 to set up, Your Honor.

9 It took nine years to get here, ladies and  
10 gentlemen, nine long years. This is what Iris looked  
11 like nine years ago before she had two bullets put in  
12 her face. A twenty-year-old young woman who was doing  
13 the wrong things, hanging around with the wrong people.  
14 But before you say, well, okay, hanging around with the  
15 wrong people you get what you get. Nobody deserves  
16 what happened to Iris Fennel on December 20, 1996.  
17 Nobody deserves to be found naked from the waist down,  
18 laying on the floor, legs spread wide open, gunshot  
19 wounds to the face. Nobody deserved to have those  
20 wounds to the face that she had; broken nose, broken --  
21 for lack of a better term -- broken throat. Nobody  
22 deserves that.

23 Now, Mr. Muller is right. I did say in my  
24 opening and I continue to say to this day and  
25 throughout this entire closing, that the Defendant's

1 own words tell you a lot about him and that's what this  
2 case is about. This case is about that Defendant.  
3 The things that he said, the things that he did on the  
4 19th into the 20th of 1996, December 1996 -- if I can't  
5 have you no one can. That statement was made in anger  
6 and in rage so much so he was punching out a car window  
7 at the time.

8 I told you this case has been marked during  
9 this nine year journey by many different things that  
10 made it difficult to get into this courtroom. You  
11 witnessed firsthand one of the most difficult parts in  
12 this whole case, the eyewitness to the murder. She  
13 runs hot and cold. She either cooperates with us and  
14 she doesn't cooperate and it's an empty chair in the  
15 courtroom and you don't get an opportunity to see her.

16 She was subpoenaed. She was supposed to be  
17 here and she didn't stay around. She left. But we  
18 can't walk away from this case so easily. We can't say  
19 oh, well, our main witness isn't here. Let's just  
20 forget about it and go home. That's just the way it  
21 is. We can't turn our heads away from the things that  
22 happened to Iris Fennel on December 20, 1996. If I was  
23 to do that I would not be doing my job. I would submit  
24 to you, ladies and gentlemen, if you simply dismissed  
25 the whole thing about Guillermina Cruz and her

1 testimony she doesn't show up, I don't believe you just  
2 do that out of hand. I suggest, ladies and gentlemen,  
3 you're not doing your job. Certainly it's a factor you  
4 have to consider, the fact she wasn't here. But I hope  
5 to show you during this closing all of the things that  
6 match with her testimony to show you that the story  
7 that she told the police, what she has been saying for  
8 years, it wasn't just out at the preliminary hearing  
9 two or three years ago, that she suddenly said that  
10 this happened. It is a story she's been telling for  
11 years, since 1996, about this Defendant committing this  
12 crime.

13 As I said in my opening, she's not the only one  
14 who changed their story. The Defendant, as you heard  
15 yourself -- I'll go through it with you here -- has  
16 changed his story drastically. You have to take a look  
17 at her and her testimony and the testimony of our  
18 witnesses. Some of them in the courtroom here today.  
19 If you have to take a critical eye of the things that  
20 they have said you have to take a critical eye at the  
21 changes in the Defendant's story.

22 Recovered memory syndrome I think Mr. Muller  
23 referred to it as. What's the Defendant's excuse for  
24 changing his story?

25 Mr. Muller tries to say, well, he's forgotten

1 details. Come on, ladies and gentlemen. The day that  
2 your girlfriend or your ex-girlfriend's body is found  
3 murdered, he forgets those details. He was the prime  
4 suspect in police custody that day in 1996, and now  
5 today he can't recall very important details. Details  
6 that come close to matching. How could he forget those  
7 things?

8 I submit to you that Guillermina Cruz hasn't  
9 forgotten details. It's a matter of whether she wants  
10 to tell details or not and the same thing goes for many  
11 of our other witnesses. What were our witnesses doing  
12 back in 1996? They were all roughly around Iris's age,  
13 19, 20, a couple a little bit older. They are all drug  
14 dealers, all drug dealers. Is it in their nature to be  
15 cooperative with the police? Was it in their nature to  
16 be cooperative back at that time? And the other  
17 question I ask you to ask yourselves as we go through  
18 this, did the police really follow up? I hate to say  
19 this. Did the police really follow up the way they  
20 should have back in 1996? I suggest that, no, they  
21 didn't, and finally, LaQuan Williams was the other part  
22 of this case. He has Iris's blood on his shoe.

23 Mr. Muller says that he also apparently has  
24 defensive wounds or some type of wounds and some other  
25 things. We'll talk about that in a few minutes. And

1 we have an altered crime scene. No matter who changed  
2 the scene, the scene has been changed and it makes it  
3 that much more difficult to get to the bottom of  
4 things. We'll talk about that.

5 I'm going to start where I started with my  
6 opening with the Defendant's own words. If this  
7 Defendant is not being truthful to the police, if he  
8 was not being truthful you have to ask yourself why.  
9 Why was he not being truthful? What was he trying to  
10 hide? What image was he trying to project? Even back  
11 in 2002 when he gave his statement to Investigator  
12 Heffner, his story continues to change. Look at how  
13 it's changed. I go back to his 1996 statement, the  
14 very first question, tell us in your own words what  
15 happened.

16 Last night, um, last night I was just out.  
17 When I left the house Iris was asleep. This is  
18 approximately five something because school was out  
19 plus I had been in the house. It was about 5:30, 6:00  
20 and he goes on and on and on. You hear him provide in  
21 detail from 5 p.m. the previous evening every little  
22 thing ad nauseam that he did, every little thing from  
23 that simple little question, tell us in your own words  
24 what happened.

25 Really, ladies and gentlemen, shouldn't he have

1 started with I went to McCleaster Street? I found  
2 Iris's body in the bedroom and this is what I found.  
3 Doesn't that seem more natural? I went to the house.  
4 I had been looking for her. I went to the house and  
5 there was smoke and I went inside. I couldn't find her  
6 body and then I found her body and he saw that she was  
7 dead. Okay.

8 Tell us what you were doing during the previous  
9 -- he starts with his alibi. He starts setting this up  
10 from the very first question. He starts providing lots  
11 and lots of details.

12 Sometimes you should be very suspicious of too  
13 many details, too many details. There are three basic  
14 statements you heard during the course of this trial;  
15 One to Investigator Taylor, one to Sergeant Maloney  
16 from CID and the statement to Detective Heffner. Yes.  
17 The statement to Maloney was completely different than  
18 the other ones. But all three of his statements are  
19 really completely different. He says to Sergeant  
20 Maloney I was buying drugs from Iris. Never mentions  
21 that at all in any of his other statements. He bought  
22 an eight ball. He owed Iris money. He owed Iris money  
23 so he couldn't buy the amount that he wanted, and the  
24 Defendant says Kazar was there with him. Let's get  
25 something straight here. Kazar isn't our friend. We

1 didn't bring Kazar into this house, into this case.  
2 The Defendant does. It's his friend. It's Iris's  
3 friends. These are the people that they hang around  
4 with. These are the type of people that they hang  
5 around with.

6 He is the one who brings Kazar's name up, that  
7 he or Kazar are at the house. He doesn't say that  
8 there's any problems with Iris and Kazar at that time.  
9 Never in any of his statements does he mention any  
10 problems with Iris and Kazar. He was the one that knew  
11 her best. They were sleeping together. They loved  
12 each other, boyfriend/girlfriend. He doesn't notice  
13 that Iris gets worried when Kazar is around. He brings  
14 Kazar around.

15 Now, there is one thing he's consistent in all  
16 three statements and that is he leaves the house to go  
17 to the bar. Now what time is another issue. In the  
18 statement to Matt Taylor, which I was just reading,  
19 5:30, 6:00 somewhere around there. When he talks to  
20 Sergeant Maloney it's some time around 6 p.m.; pretty  
21 close, and when he talks to Detective Heffner he really  
22 doesn't give a time. But there the similarities end.  
23 When he leaves in his statement in 1996 he leaves  
24 alone. He makes a big deal of saying I left alone, and  
25 in fact, Iris was sleeping. Remember that. Iris was

1 sleeping. He left alone to go to the bar.

2 Now, he tells Sergeant Maloney he left the  
3 house but he left with somebody. He left with Kazar.  
4 He really changes it when he talks to Detective  
5 Heffner. He's with Iris. Now, yes, you might forget  
6 some details here and there, but to go from I leave the  
7 house alone to Iris and I all left together, that's a  
8 big change, ladies and gentlemen. It's not one you can  
9 ignore and you have to ask yourself what's he trying to  
10 do. Back in 1996 he's trying to set up his alibi. I  
11 suggest to you he's still trying to do the same thing  
12 in 2002. However, he's doing it for a different  
13 purpose in 2002. I would suggest to you in 2002 he's  
14 trying to convince this detective how lovey-dovey the  
15 two of them were and how much in love they were;  
16 therefore, they had no problems; therefore, he had no  
17 reason to commit this crime.

18 You'll see more of that as we go through this.  
19 He says in 1996 I started calling her around 8 p.m. I  
20 started calling Iris around 8 p.m., because he's at  
21 Fav's. He called the house at 8 or 8 something. The  
22 first time I called the phone was just ringing. I  
23 wrote it off that she was just asleep, maybe she went  
24 outside. So after that maybe I called around -- not  
25 too far after that maybe -- he makes probably according

1 to his statement about 3 phone calls and he says Iris  
2 arrives at 11 p.m. I seen her. It was around 11  
3 something; around 11 something that's the first time I  
4 seen her that night.

5 Now he doesn't say -- there's no discussion  
6 with Sergeant Maloney about this but with Heffner she's  
7 already in the bar. So there is no phone calls at  
8 8:00, no frantic phone calls; everything is normal in  
9 this house. Everything is normal at the bar. We're  
10 all drinking, all having fun, everything normal, no  
11 problems. Her and I were chilling. It continues.  
12 When Iris arrives at 11:00 he starts jumping all over  
13 her. Where were you? I just woke up. Well, I was  
14 calling you. You didn't answer. Where were you? I  
15 want to know where you are. His own words consistent  
16 with the testimony that is suddenly refreshed memory  
17 that Mr. Muller keeps returning to our witnesses said  
18 this is the way he acted around her. He wanted to know  
19 where she was at all times. He wanted to control her.

20 This is evidence of that through his own words.  
21 Iris then was speaking with her friends because we only  
22 talked about five minutes he said back then and then  
23 Iris goes outside.

24 He doesn't really say anything to Sergeant  
25 Maloney; to Detective Heffner Iris is already at the

1 bar. There was no fight whether she was sleeping or  
2 outside or where she was. There was no fight that  
3 night now. Iris is going out to serve someone. She's  
4 going out to do a drug deal and all that, and  
5 everything is still okay and, in fact, he wants to  
6 paint the picture that everything was so rosy, that we  
7 had a kiss by the junk box before she went out, and  
8 that's the last time I saw her. That's what he's  
9 trying to say in 2002.

10 Now, as I said, with Sergeant Maloney there's  
11 no discussion about that. There's a witness who does  
12 discuss what happened and that's Tawana Poteat. Tawana  
13 Poteat says that Iris was annoyed. Iris was annoyed  
14 that night. This M-F'er is getting on my nerves as  
15 Iris walked by her. He's getting on my nerves. I'm  
16 going home. I'm out of here. Tawana is, hey, we're  
17 going to be making money. See you tomorrow, and right  
18 after that she sees the Defendant. Remember the  
19 Defendant is pounding on his way out and the Defendant  
20 either goes out with her or just after her but she  
21 doesn't know essentially whether they actually leave or  
22 go anywhere together. But Iris says she's going home.  
23 This testimony here of Tawana Poteat is pretty close to  
24 what the Defendant was saying back in 1996. So don't  
25 just take Mr. Muller at his word and dismiss what she's

1 saying because she told the police this years later.  
2 What she's saying pretty much tracks with what he was  
3 saying except for he's minimizing and he says it the  
4 way it was. He minimizes because they just had a  
5 conversation and she was sleeping. I suggest to you  
6 what really happened. This M-F'er is getting on my  
7 nerves. He's annoying me. I'm not sticking around  
8 here tonight.

9 Then begins the quest how many times does he go  
10 to find Iris. He goes to find Iris over twice, went  
11 and looked all around for her asking everybody, making  
12 phone calls, more and more phone calls, and one time he  
13 goes over to the house in this statement. The second  
14 time he's over to the house there's a light on in the  
15 house. Both times he goes over to the house he goes  
16 inside the house. When he talks to Detective Taylor  
17 he's inside the house, but Iris isn't there.

18 Now, the first time is some time, 12:30 before  
19 1:00, and, yes, I would agree with Mr. Muller, maybe  
20 she wasn't back at the house by then. Although the  
21 receipt says it was 11:15 she was done at the store but  
22 who knows how long it took her to get home. Maybe she  
23 wasn't there the first time. But the second time and  
24 it's hard to tell from his statement when exactly it  
25 is. It can be any time from 1:30 to 2:30 that he's

1 back in the house when he sees the light on and there's  
2 nobody home.

3       The bedroom light was off. He tells Heffner he  
4 went to the house three times and the times have  
5 changed. I am going to hit all the times he's back.  
6 The times are off are now. By this time does he know  
7 that Johanna Johnson from the beginning of this case  
8 saying she was on the phone. Is that perhaps why  
9 there's a change in his time frame? Does he have that  
10 knowledge? Now when he gives this statement to Heffner  
11 in 2002 it's not even dark. It's almost dark the time  
12 he says when he's going over to the house the first  
13 time. In his statement to Investigator Taylor it was  
14 about an hour, it was about an hour. Iris came in  
15 about 11. Some time after midnight that he first  
16 left. When he talked to Investigator Taylor it was  
17 some time after midnight.

18       And remember this whole conversation of Tawana  
19 Poteat witnessed about her being annoyed and leaving  
20 out of there some time not long after 11 she probably  
21 left there. In his own statement he says that he only  
22 talked to her for about five minutes in his first  
23 statement.

24       In his last statement now suddenly not only  
25 does he arrive and there's a light on in the bedroom

1 but he arrives, light on in the bedroom and there's  
2 \$1500 sitting out. This is the first time he ever  
3 mentioned \$1500. It's sitting out. Does that give  
4 somebody motive to come in and rob her suddenly? Is  
5 that why that's in here? Remember what he said when he  
6 first spoke to Muldrow? Muldrow said he was all over  
7 the place, but Officer Muldrow wrote in his report and  
8 put it in quotation marks, we're talking about most  
9 accurate back in 1996 -- he put in his report, I don't  
10 know what happened to her. I was trying to get in the  
11 house all night but couldn't. I was trying to get in  
12 the house all night but couldn't.

13 Again look at the changes in his story. He is  
14 changing his story. Is it that he can't remember his  
15 original story? Is that what it is? Times of the  
16 phone calls, times of visits to the house, they just  
17 don't match. He says to Heffner the last time he  
18 visited the house some time after midnight and the  
19 first statement was much later. Again we talked about  
20 Johanna Johnson was on the phone from 1 a.m. to 1:45,  
21 got off the phone for about 10 minutes and then was on  
22 from 1:55 to 2:40; about the cooking of chicken. Who  
23 says you can't reheat chicken in the morning, ladies  
24 and gentlemen. Maybe she was cooking chicken that  
25 night. Johanna says she was when she was talking to

1 her on the phone. Nothing says that Iris gets up at 5  
2 or 6 in the morning she can't be cooking chicken in the  
3 morning. Nothing. So a guest gets there around 2:30  
4 in the morning, stops cooking the chicken or puts it  
5 aside for something else, dealing drugs. Now she's  
6 busy doing that. What's she doing? I don't know. I  
7 don't know.

8 He says he bought an eight ball for \$70, wanted  
9 more but owed her 20 or \$30. That's what he tells  
10 Sergeant Maloney. Tells Heffner there's \$3,000 in the  
11 house. He says to Heffner I had 20 or \$30 in my  
12 pocket. How does he owe 20 or \$30 and can't buy the  
13 drugs. He also has 20 or \$30 in his pocket. Again he  
14 can't keep his stories straight.

15 Daelene says, as Mr. Muller pointed out, she  
16 had the safe and she had gotten the money out for  
17 Christmas and Tawana says she was a better hustler.  
18 She was the one making the money, and he was the one  
19 living off of her. If they are breaking up, she's  
20 through with him, they are done; she wants no part of  
21 him anymore and she does indeed have \$3,000 in that  
22 house, he might want it. Is there any evidence of  
23 that? \$3,000 in the house, 1500 sitting out; it's  
24 under the bed. He knows where she keeps it. He knows  
25 her hiding spot under the bed, lots of stash spots,

1 lots. Again the Defendant's own words it is both our  
2 money.

3 He's annoying her. He wants to control her.  
4 He wants to know where she is at all times, and now she  
5 has all this money in the house and it's his money too.  
6 But is she giving it to him? I mean, he owes her  
7 money. How is it his money too? By his own words he  
8 owes her money. How is that \$3,000 his too? Defense  
9 Exhibit 1, look at the state of the house, the state of  
10 the mattresses. Looking for money, is that what this  
11 is?

12 Commonwealth Exhibit 34, again, the mattresses  
13 all moved. Is somebody looking under the bed? Take a  
14 closer look at the corner of Defense Exhibit No. 1.  
15 If you look closely when you get an opportunity to look  
16 at the photographs it would appear that perhaps these  
17 two mattresses here are really twin size box springs,  
18 and if you can picture these two twin size box springs  
19 side by side on the floor because they don't have a  
20 formal bed, and in this appears to be either a full or  
21 queen size mattress perhaps sitting on top of that.  
22 The Defendant knows she keeps her money under the bed.  
23 Why isn't this one moved? Why is this one here pulled  
24 out of the corner? Does he know exactly where to look?  
25 When I talk about a crime scene being altered, this is